Calendar No. 1984

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1967

# URBAN RENEWAL ASSISTANCE TO DISASTER AREAS

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. BUSH, from the Committee on Banking and Currency, submitted the following

## REPORT

[To accompany S. 3844]

### GENERAL STATEMENT

By adding a new section 111 to the Housing Act of 1949, this bill would provide Federal assistance in the rehabilitation and rebuilding of disaster areas such as those affected by recent major floods and hurricanes. It would permit Federal agencies to extend urban renewal assistance to disaster-affected communities without the application of certain requirements and limitations which the statute now requires in normal situations. In addition, FHA mortgage insurance under sections 220 and 221 of the National Housing Act would be made available in major disaster areas as declared by the President. Finally, the bill would amend existing law to authorize Federal planning grants to a community affected by a major disaster without regard to whether the community's population is less than 25,000; and would increase the planning grant authorization from $5 million to $10 million.

Title I of the Housing Act of 1949 provides Federal aid to assist communities in redeveloping slums and blighted areas. Thus, communities with the help of the Federal Government may plan and execute urban renewal projects which may include slum clearance, rehabilitation, and conservation, or a combination of such activities. Under the present urban renewal program, a community or a local public agency must comply with a number of requirements in order to qualify for Federal aid.

The development of an urban renewal plan, including demolition, rehabilitation, conservation, and the relocation of tenants, has proved to be both complicated and time consuming. Thus, while the benefits of the urban renewal program would be extremely helpful to many communities which have suffered damage as the result of a major disaster, the difficulty of complying with the requirements imposed by



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the statute prevents these communities from receiving this type of Federal aid at the time when such aid is most urgently needed.

The administration, therefore, had recommended, and this committee agrees, that where the local governing body certifies and the Housing Administrator finds that an urban area is in need of redevelopment or rehabilitation as a result of flood, fire, hurricane, earthquake, storm, or other catastrophe which the President has declared under existing law to be a major disaster, the Housing Administrator should be authorized to extend urban renewal assistance without regard to number of requirements contained in title I of the Housing Act of 1949. The requirements which this bill would waive are as follows:

1. The workable program requirement (sec. 101(c)), except that a workable program would be required by some future date determined by the Housing Administrator.

2. The requirement that the urban renewal plan conform to a general plan for the locality.

3. The requirement that there be a feasible method for the temporary relocation of families displaced from the project area (sec. 105 (c)). Inasmuch as the displacement of many families will probably already have occurred as a result of the major disaster, the relocation requirements would be modified to permit the local public agency to present a plan for the encouragement (to the maximum extent feasible) of the provision of dwellings suitable for families displaced by the catastrophe or by subsequent redevelopment activities.

4. The requirement that a public hearing be held before any land shall be acquired by the local public agency.

5. The requirement that the urban renewal area be a slum or blighted area.

6. The requirement with respect to the "predominantly residential" character of urban renewal areas.

In addition, the local public agency, in preparing its urban renewal plan, would be required to give due regard to the removal or relocation of dwellings from the site of the recurring floods or other recurring catastrophes.

Section 220 of the National Housing Act provides FHA mortgage insurance for residential construction in urban renewal areas. This section would be amended to permit the Federal Housing Administration to make available its mortgage insurance aids to replace housing in disaster-affected communities.

Section 221 of the National Housing Act provides FHA mortgage insurance to assist in relocating families from urban renewal areas and in relocating families to be displaced as a result of Government action in a community which has an approved slum clearance or urban renewal project. The mortgage insurance made available to displaced families under section 221 also would be made available in disaster-affected communities.

Section 701 of the Housing Act of 1954 presently authorizes the Housing and Home Finance Administrator to make planning grants to States or to cities and municipalities having a population of less than 25,000. The bill would authorize the Administrator to make planning grants to cities and other municipalities having a population of 25,000 or more, if those communities have suffered damage as a result of a catastrophe which the President has declared to be a major disaster.

In addition, the present $5 million authorization for planning grants under section 701 of the Housing Act of 1954 is increased to $10 million. This planning program has been delayed by the inadequacy of many State laws, but during 1955 many States took legislative action to permit communities to avail themselves of the benefits of this planning program, and applications in preparation indicate that activities under the program will increase rapidly. The proposed $5 million increase, while not predicated upon the anticipated demands of disaster-affected areas, will be helpful in meeting the normal increase in demand and in permitting disaster-affected communities to avail themselves of the benefits of this program.

The provisions of this bill were originally contained in S. 3302, a bill which included a majority of the administration's housing recommendations for 1956. Sections 305 and 306 of S. 3302 were deleted by the committee and are now reported as a separate bill. This new bill thus contains all of the administration's recommendations with respect to urban renewal aids for disaster areas. The language of the bill is identical with the language recommended by the administration on this subject.

## CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## NATIONAL HOUSING ACT, AS AMENDED

* * * * * * *

SEC. 220. (d) (1) [(A) be located in (i) the area of a slum clearance and urban redevelopment project covered by a Federal-aid contract executed, or a prior approval granted, pursuant to title I of the Housing Act of 1949, as amended, before the effective date of the Housing Act of 1954, or (ii) an urban renewal area (as defined in title I of the Housing Act of 1949, as amended) in a community respecting which the Housing and Home Finance Administrator has made the certification to the Commissioner provided for by subsection 101 (c) of the Housing Act of 1949, as amended: *Provided*, That a redevelopment plan or an urgan renewal plan (as defined in title I of the Housing Act of 1949, as amended), as the case may be, has been approved for such area by the governing body of the locality involved and by the Housing and Home Finance Administrator, and said Administrator has certified to the Commissioner that such plan conforms to a general plan for the locality as a whole and that there exist the necessary authority and financial capacity to assure the completion of such redevelopment or urban renewal plan, and] *(A) be located in (i) the area of a slum clearance and urban redevelopment project covered by a Federal-aid contract executed, or a prior approval granted, pursuant to title I of the Housing Act of 1949, as ameded, before the effective date of the Housing Act of 1954, or (ii) an urban renewal area (as defined in title I of the Housing Act of 1949, as amended) in a community respecting which the Housing and Home Finance Administrator has made the certification to the Commissioner provided for by subsection 101 (c) of the Housing Act*

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*of 1949, as amended, or (iii) the area of an urban renewal project assisted under section 111 of the Housing Act of 1949, as amended: Provided, That, in the case of an area within the purview of clauses (i) or (ii) of this sentence, a redevelopment plan or an urban renewal plan (as defined in title I of the Housing Act of 1949, as amended), as the case may be, has been approved for such area by the governing body of the locality involved and by the Housing and Home Finance Administrator, and said Administrator has certified to the Commissioner that such plan conforms to a general plan for the locality as a whole and that there exist the necessary authority and financial capacity to assure the completion of such redevelopment or urban renewal plan: And provided further, That, in the case of an area within the purview of clause (iii) of this sentence, an urban renewal plan (as required for projects assisted under said section 111) has been approved for such area by the said governing body and by the said Administrator, and the said Administrator has certified to the Commissioner that such plan conforms to definite local objectives respecting appropriate land uses, improved traffic public transportation, public utilities, recreational and community facilities, and other public improvements, and that there exist the necessary authority and financial capacity to assure the completion of such urban renewal plan, and*

SEC. 221. (a) This section is designed to supplement systems of mortgage insurance under other provisions of the National Housing Act in order to assist in relocating families from urban renewal areas and in relocating families to be displaced as the result of governmental action in a community respecting which (1) the Housing and Home Finance Administrator has made the certification to the Commissioner provided for by subsection 101 (c) of the Housing Act of 1949, as amended, or (2) there is being carried out a project covered by a Federal aid contract executed, or prior approval granted, by the Housing and Home Finance Administrator under title I of the Housing Act of 1949, as amended, before the effective date of the Housing Act of 1954, *or (3) there is being carried out an urban renewal project assisted under section 111 of the Housing Act of 1949, as amended.* Mortgage insurance under this section shall be available only in those localities or communities which shall have requested such mortgage insurance to be provided: *Provided*, That the Commissioner shall prescribe such procedures as in his judgment are necessary to secure to the families, referred to above, a preference or priority of opportunity to purchase or rent such dwelling units: *Provided further*, That the total number of dwelling units in properties covered by mortgage insurance under this section in any such community shall not exceed the aggregate number of such dwelling units which the Housing and Home Finance Administrator, from time to time, certifies to the Commissioner to be needed for the relocation of families referred to above and who would be eligible to rent or purchase dwelling accommodations in properties covered by mortgage insurance authorized by this section: *Provided further*, That, with respect to any community referred to in clause (1) of this subsection, said Administrator shall not certify any dwelling units during any period when, in his opinion, the locality fails to carry out the workable program upon which said Administrator based the certification to the Commissioner that mortgage insurance under this section may be made available in such community; *And provided further*, That with respect to any community referred to in [clause (2)] *clause (2) or (3)*

of this subsection (but not clause (1) thereof), the number of dwelling units certified by said Administrator shall not exceed the number which he estimates to be needed for the relocation of such displaced families during the period when the project referred to in said [clause (2)] *clause (2) or (3)* is being carried out.

HOUSING ACT OF 1954, AS AMENDED

* * * * * * *

SEC. 701. To facilitate urban planning for smaller communities lacking adequate planning resources, the Administrator is authorized to make planning grants to State planning agencies for the provision of planning assistance (including surveys, land use studies, urban renewal plans, technical services and other planning work, but excluding plans for specific public works) to cities and other municipalities having a population of less than 25,000 according to the latest decennial census. [The Administrator is further authorized to make planning grants for similar planning work in metropolitan and regional areas to official State, metropolitan, or regional planning agencies empowered under State or local laws to perform such planning.] *The Administrator is further authorized to make planning grants for similar planning work: (1) in metropolitan and regional areas to official State, metropolitan or regional planning agencies empowered under State or local laws to perform such planning; (2) to cities, other municipalities and counties having population of twenty-five thousand or more according to the latest decennial census which have suffered substantial damage as a result of a flood, fire hurricane, earthquake, storm or other catastrophe which the President, pursuant to section 2 (a) of the Act entitled "An Act to authorize Federal assistance to State and local governments in major disasters and for other purposes" (Public Law 875, 81st Cong., approved September 30, 1950), as amended, has determined to be a major disaster; and (3) to State planning agencies for the provision of planning assistance to such cities, other municipalities and counties referred to in clause (2) hereof.* Any grant made under this section shall not exceed 50 per centum of the estimated cost of the work for which the grant is made and shall be subject to terms and conditions prescribed by the Administrator to carry out this section. The Administrator is authorized, notwithstanding the provisions of section 3648 of the Revised Statutes, as amended, to make advance or programs payments on account of any planning grant made under this section. There is hereby authorized to be appropriated not exceeding [$5,000,000] *$10,000,000* to carry out the purposes of this section, and any amounts so appropriated shall remain available until expended.

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84TH CONGRESS, 2d Session | SENATE | REPORT No. 1968

# INCREASING BENEFITS TO WIDOWS OF FORMER LIGHTHOUSE SERVICE EMPLOYEES

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. PAYNE, from the Committee on Interstate and Foreign Commerce, submitted the following

## REPORT

[To accompany S. 2937]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 2937) to increase from $50 to $75 per month the amount of benefits payable to widows of certain former employees of the Lighthouse Service, having considered the same, report favorably thereon without amendment, and recommend that the bill do pass.

### PURPOSE OF THE BILL

S. 2937 would increase from $50 to $75 per month the annuity to which unremarried widows of certain former employees of the Lighthouse Service are entitled, whose husbands died while receiving retired pay. Also covered by the bill would be widows of certain employees of the Service who have died or may die from non-service-connected causes after 15 or more years of employment.

In support of the proposed increase in benefits, it is argued that present payments to the recipients, many of them well along in years, are quite small in relation to today's living costs, that pay standards upon which they were based were never quite adequate, and that the wives of light keepers, while not on the payroll themselves, were required to take over their husband's duties in his absence or time of illness, and so forth.

Authorized by the act of August 19, 1950, such annuities were paid to 382 widows during fiscal 1955, and it is estimated that this number will increase to 392 and 402 for fiscal 1956 and 1957, respectively.

The Lighthouse Retirement Act, which established in 1918 a non-contributory retirement system for the employees covered, is administered by the United States Coast Guard. Under its provisions the widow's annuity payments begin immediately upon the husband's



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death regardless of her age. Total annuity payments under the existing statute are estimated for fiscal year 1957 at $238,200. Enactment of this bill would raise this figure by $119,100.

The General Accounting Office had no objection to increasing the annuity to $75 per month. The Treasury Department advised that the Bureau of the Budget could not recommend enactment of the bill. The Civil Service Commission reported that it was opposed to the bill in its present form but would support a percentage increase in accordance with the percentage increase granted by Congress to civil service retirement annuities last year. The Commission based its report on the recommendation concerning annuity increases made to Congress by the Committee on Retirement Policy for Federal Personnel, established by the act of July 16, 1952, which reads as follows:

> (1) The problem of adjusting the annuity benefits of retired employees and of the survivors of former employees is one which must be resolved from time to time as circumstances require, e. g., a substantial increase in the cost of living. The committee believes that it is incumbent on the Congress when adjusting the current pay of Government employees, or when liberalizing the benefit formula for future annuitants, to reexamine the benefits paid to annuitants already on the rolls with a view to adjusting their annuities as warranted.
>
> (2) In making the annuity adjustments, consideration should be given to the fact that the staff retirement systems are designed primarily to provide benefits for career employees. When adjustments in annuities are made, the original relationship of the basic annuity to the salary and service of the annuitant should be maintained.
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> (3) When enacting provisions for adjustment of annuities the Congress should concurrently make appropriations to finance such adjustments.

It is the belief of the committee that, consistent with the above recommendation, the increase from $50 to $75 per month for persons covered by this bill is clearly warranted. Therefore, the committee felt that the Civil Service Commission recommendation of a 12-percent increase should be disregarded in this case.

The need for an increase in the annuity paid to widows of employees of the Lighthouse Service is based almost entirely on the increased cost of living since the annuity was established. This is the basic criteria established by paragraph (1) of the act of July 16, 1952. Paragraph (2) suggests a reappraisal of the relationship of the annuity to the salary of the employee. In this case the original annuity was not based on any relationship to salary or other formula that are used for establishing retirement under other Federal systems. Therefore, the committee concluded that the procedures followed for increases in annuities under other systems should not be applied to an annuity that was established on a different basis.

Accordingly the committee considered the increase provided in this bill on its merits. In view of today's high cost of living the committee concluded that the annuity granted by this bill was thoroughly justified.

Reports from the Comptroller General of the United States, the United States Civil Service Commission, and the Department of the Treasury are appended.

COMPTROLLER GENERAL OF THE UNITED STATES,
*Washington 25, January 27, 1956.*

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Interstate and Foreign Commerce,*
*United States Senate.*

DEAR MR. CHAIRMAN: Your letter of January 17, 1956, acknowledged January 18, requests our comments on S. 2937.

Under the provisions of the act of August 19, 1950, volume 64, Statutes, page 465, title 33, United States Code, sections 771, 772, unremarried widows of certain former employees of the Lighthouse Service who died while receiving retired pay, and widows of certain employees of the Service who have died or who may die from non-service-connected causes after 15 or more years of employment, are entitled to receive an annuity of $50 per month. S. 2937 would increase the amount of this annuity to $75 per month.

We have no information regarding the merits of the bill. However, we perceive no serious objection to increasing the annuities to the extent proposed.

As to the probable cost of this bill, a table on page 125 of the budget of the United States for the fiscal year 1957 shows that the annuities authorized by the act of August 19, 1950, were paid to 382 Lighthouse Service widows during the fiscal year 1955, and estimates that during the fiscal years 1956 and 1957, respectively, there will be 392 and 402 widows entitled to such annuities. On that basis an appropriation of $241,200 will be required to pay these annuities at $50 per month during the 1957 fiscal year. Should this bill become law an appropriation of $361,800 will be required to pay the annuities during that year or an increase of $120,600.

Sincerely yours,

JOSEPH CAMPBELL,
*Comptroller General of the United States.*

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UNITED STATES CIVIL SERVICE COMMISSION,
*Washington 25, D. C., May 9, 1956.*

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Interstate and Foreign Commerce,*
*United States Senate.*

DEAR SENATOR MAGNUSON: I am referring further to your letter of January 17, 1956, relative to S. 2937, a bill to increase from $50 to $75 per month the amount of benefits payable to widows of certain former employees of the Lighthouse Service.

The act of August 19, 1950, provides for widows' benefits in the cases of employees (except certain professional and scientific personnel) of the Lighthouse Service who died before enactment thereof or who die thereafter if, at the time of death, such persons were receiving or entitled to receive retirement pay under section 6 of the Lighthouse Retirement Act. Should the employee or former employee in any such case be survived by a widow to whom he was married prior to



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his retirement from the Lighthouse Service, the widow, if she has not since remarried, is paid $50 a month until her death or remarriage. In the case of a similar employee who has died or shall die from non-service-connected causes after 15 or more years' employment in the Lighthouse Service, his widow is paid a monthly gratuity of $50 until she dies or remarries.

The Lighthouse Retirement Act, which established in 1918 a non-contributory retirement system for the employees covered, is administered by the United States Coast Guard and not by this office. Accordingly, in making comments on the bill which became the act of August 19, 1950, the Civil Service Commission recommended the elimination of sections 3 and 4 thereof which directed the Commission to prescribe application forms, make rules and regulations for carrying out its provisions, etc. The Commission also pointed out by way of comparison that an employee retiring under the Civil Service Retirement Act, under which he contributed a part of the system's cost, must agree to accept a reduced annuity for himself in order to provide an annuity to his widow. Further point was made that the lighthouse widow's annuity would begin immediately regardless of her age, while one under the Civil Service Retirement Act is not payable until the widow attains age 50 unless the employee is also survived by a dependent child. The proposal was, however, passed in its existing form.

S. 2937 would increase to $75 the monthly rate for these widows now on the roll and for those added in the future. It has been estimated that the appropriation necessary to pay these lighthouse widows during the fiscal year 1957 is $238,200, and passage of this bill would raise this figure by 50 percent, or by $119,100. Not taking into consideration any widows who may be added to the roll in the future, paying the annuity increase during the lifetime of the present payees would involve a total additional expenditure of over $1 million, all of which would have to be borne by the Government.

The Committee on Retirement Policy for Federal Personnel, created by the act of July 16, 1952 to study all Federal retirement systems, made this recommendation to Congress regarding annuity increases:

"(1) The problem of adjusting the annuity benefits of retired employees and of the survivors of former employees is one which must be resolved from time to time as circumstances require, e. g., a substantial increase in the cost of living. The committee believes that it is incumbent on the Congress when adjusting the current pay of Government employees, or when liberalizing the benefit formula for future annuitants, to reexamine the benefits paid to annuitants already on the rolls with a view to adjusting their annuities as warranted.

"(2) In making the annuity adjustments, consideration should be given to the fact that the staff retirement systems are designed primarily to provide benefits for career employees. When adjustments in annuities are made, the original relationship of the basic annuity to the salary and service of the annuitant should be maintained.

"(3) When enacting provisions for adjustment of annuities the Congress should concurrently make appropriations to finance such adjustments."

The Commission concurs in these principles. Accordingly, following enactment of the general pay raise last year, this office recommended

a relative annuity increase under the Civil Service Retirement Act. Action to this end was taken by Congress in enacting the act of August 11, 1955, under which a maximum increase of 12 percent was granted.

The Commission believes that the question of any increase for Lighthouse widows should be determined only in accordance with these same principles. This office would not object to an increase approximating the same percentage allowed civil service retirees generally, but is unable to concur in enactment of the proposal as presently drawn.

Adverse action on S. 2937 is accordingly recommended.

In connection with a duplicate bill, H. R. 8467, the Bureau of the Budget advised there would be no objection to the submission of this report to the committee.

By direction of the Commission:

Sincerely yours,

PHILIP YOUNG, *Chairman.*

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TREASURY DEPARTMENT,
*May 3, 1956.*

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Interstate and Foreign Commerce*
*United States Senate, Washington 25, D. C.*

MY DEAR MR. CHAIRMAN: Reference is made to the request of your committee for the views of the Treasury Department on S. 2937, to increase from $50 to $75 per month the amount of benefits payable to widows of certain former employees of the Lighthouse Service.

The purpose of the bill is to increase from $50 to $75 the monthly payment received by widows of former employees of the Lighthouse Service, other than certain professional and scientific employees, who were retired under section 6 of the act, of June 20, 1918, the Lighthouse Service retirement law. The $50 monthly payment was established by the act of August 19, 1950.

The Bureau of the Budget has advised that it cannot recommend enactment of H. R. 8467, an identical bill, in its present form.

Very truly yours,

DAVID W. KENDALL,
*Acting Secretary of the Treasury*

## CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

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NAVIGATION AND NAVIGABLE WATERS

(U. S. C., title 33)

SEC. 771. * * *.

Where—

(1) any former employee (other than a former employee whose position was classified in one of the grades of the professional and scientific service of the Classification Act of 1923, as amended, or a comparable grade of the Classification Act of 1923, as amended, or a comparable grade of the Classification Act of 1949, or who performed duties of a position comparable to a position so classified after the enactment of law requiring the classification of such positions) of the Lighthouse Service has died or shall hereafter die at a time when he was receiving or was entitled to receive retirement pay under section 763 of this title as amended and supplemented, and

(2) such former employee is survived by a widow who married him prior to his retirement from the Lighthouse Service and has not since remarried—such widow, so long as she does not remarry, shall be paid [$50] *$75* per month by the Secretary of the Treasury.

SEC. 772. * * *.

Where—

(1) any employee (other than an employee whose position was classified in one of the grades of the professional and scientific services of the Classification Act of 1923, as amended, or a comparable grade of the Classification Act of 1949, or who performed duties of a position comparable to a position so classified after the enactment of law requiring the classification of such positions) of the Lighthouse Service has died or shall hereafter die from non-service-connected causes after fifteen or more years of employment in such service, and

(2) such employee is survived by a widow who has not since remarried, such widow, so long as she does not remarry, shall be paid [$50] *$75* per month by the Secretary of the Treasury.

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Calendar No. 1986

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1969

# AUTHORIZING A NEW FISH HATCHERY IN MILES CITY, MONT.

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Interstate and Foreign Commerce, submitted the following

## REPORT

[To accompany H. R. 8810]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 8810) authorizing the Secretary of the Interior to construct, equip, maintain, and operate a new fish hatchery in the vicinity of Miles City, Mont., having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

This bill would authorize the establishment of a new fish hatchery in the vicinity of Miles City, Mont., which is urgently needed to replace the present warm-water hatchery in that region. The present hatchery, established in 1927, has become very inadequate as to size, location, and production facilities, particularly in view of the rapidly developing farm pond program. The Soil Conservation Service has estimated that there are 50,000 farm ponds in the State of Montana alone. Thus, the heavy demand for the output of the existing obsolete hatchery is greater than its production capacity.

The new hatchery, which will be established at a more suitable location for the growing of warm-water species of fish, will provide fish fry for the stocking of ponds, lakes, and streams in the States of Montana, Idaho, Oregon, Washington, and California. In addition the new hatchery will provide limited distribution to western North Dakota and northern Wyoming.



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The proposed facilities and estimated cost of construction thereof are as follows:

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|---|---|
| Service building, including hatching room (jar-battery and tanks, office, shop, and garage) | $90, 000 |
| 3 residences | 46, 200 |
| 3 garages | 5, 400 |
| Well and pump (domestic and supplemental hatchery water supply) | 5, 000 |
| Hatchery and water supply | 20, 000 |
| Earthen ponds, 40 surface acres (sixteen 1-acre and eight 3-acre ponds) | 160, 000 |
| Water supply reservoir, 15 surface acres | 60, 000 |
| Sewage system | 5, 000 |
| Roads and grading | 10, 000 |
| Utilities | 3, 000 |
| Landscaping and fencing | 8, 000 |
| Equipment | 12, 000 |
| Engineering and contingencies | 40, 400 |
| Total cost of program | 465, 000 |

It is considered necessary for the advancement of modern methods in fish farming and the stocking of inland water areas to have a station such as planned to supply fish fry for planting in the ponds, lakes, and streams.

The bill has been approved by the Secretary of the Interior and has been cleared with the Bureau of the Budget.

A letter from the Secretary of the Interior to the chairman of your committee strongly endorsing a companion bill by Senator Murray is set forth below.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
*Washington, D. C., April 30, 1956.*

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Interstate and Foreign Commerce,*
*United States Senate, Washington, D. C.*

MY DEAR SENATOR MAGNUSON: Your committee has requested a report on S. 3036, a bill to provide for the establishment of a new fish hatchery in the vicinity of Miles City, Mont.

We recommend that S. 3036 be enacted.

Establishment of a new fish hatchery in the vicinity of Miles City, Mont., is urgently needed to replace the present warm-water hatchery in that region that has been in existence since 1927. This hatchery has become very inadquate as to size, location ,and production facilities. The heavy demand for the output of this hatchery is greater than its production capacity. We are unable to meet such demand because of present hatchery limitations and the fact that the present facilities are obsolete. In this connection it should be noted particularly that the Miles City fish hatchery is the only Federal warm-water fish-cultural station in the States of California, Idaho, Montana, Nevada, Oregon, and Washington. In addition to furnishing warm-water fishes to stock waters in the named States, there would be a limited distribution from the new hatchery of fish to western North Dakota and northern Wyoming.

Rehabilitation of the existing Miles City hatchery is impracticable, because it is located in a swampy area that does not permit the drainage of ponds that is necessary for efficient and economical operations. The proposed new hatchery would be established in a more suitable location. Also, it would comprise a larger area of approximately 40 surface acres of rearing ponds, and it would include expanded facilities

for the hatching of northern pike and walleyed pike eggs, in addition to bass, blue gill, and catfish.

The proposed new hatchery would produce approximately 10 million fish annually, which should be adequate to meet the presently conceived stocking needs of the region for warm-water fish. There is a demand for predaceous warm-water species to be used for corrective stocking of fish in many public waters such as federally constructed reservoirs where the use of fish toxicants is not indicated. Also, there is a need to provide warm-water fishes for other waters where chemical treatments are being used to eradicate rough-fish populations.

As there are no State warm-water fish hatcheries in Montana, Nevada, Oregon, or Washington, and because the States of California and Idaho have limited facilities for the propagation of warm-water fishes, the Fish and game departments of these Western States are applying to this Department for bass and other warm-water fish. We have been able to fill these applications only in part and from such distant points as the Federal hatchery at Tishomingo, Okla. The Miles City hatchery serves, of course, the farm-pond program and performs a valuable service to the citizens of that region in this matter. The Soil Conservation Service has estimated that there are 50,000 farm ponds in the State of Montana alone.

Location of the new hatchery near Miles City is desirable for various reasons, particularly because of the water temperature in that area which is vital in the rearing of warm-water fish. Also, the location of the hatchery near Miles City is desirable because that area is centrally located with respect to the region that would be served by the new hatchery. In this connection, it should be noted, however, that we have given careful consideration to the question of locating the new hatchery at the Fort Peck Dam.

In June of 1955 the Montana Fish and Game Department and the Fish and Wildlife Service of this Department made a comprehensive survey of prospective hatchery sites below Fort Peck Dam as well as at Miles City. From the survey it was determined that water temperatures on release from the Fort Peck Reservoir would be too low to assure the propagation of warm-water fish. A temperature record of water in the penstock of the Fort Peck Dam, from which a hatchery water supply would be taken, showed a range between 33° in the winter to a high of 56° in the summer of 1953. Largemouth bass spawn at temperatures between 55° and 60° and bluegill require water temperatures near 80° for reproduction. Although the introduction of cold water to rearing ponds would not preclude the reproduction of warm-water species during a warm spring season in the Fort Peck area, a cold, cloudy spring would eliminate any chance of bluegill production and could be expected to seriously affect the production of bass.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

WESLEY A. D'EWART,
*Assistant Secretary of the Interior.*

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Calendar No. 1987

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1970

# AUTHORIZING SECRETARY OF THE TREASURY TO CONVEY CERTAIN PROPERTY TO THE COUNTY OF PIERCE, STATE OF WASHINGTON

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Interstate and Foreign Commerce, submitted the following

## REPORT

[To accompany S. 3457]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3457) to authorize the Secretary of the Treasury to convey certain property to the county of Pierce, State of Washington, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

S. 3457 would authorize and direct the Secretary of the Treasury to transfer by quitclaim deed to the county of Pierce, State of Washington, for public use through the Brown's Point Improvement Club, a 105-foot strip of land, 0.8085 acre, at the southern end of the Brown's Point Coast Guard Light Station Reservation in Pierce County, Wash.

Section 2 of the bill provides that:

> The conveyance of the property authorized by the Act shall contain a condition that, in the event the property so conveyed to such county ceases to be used for public purposes, title therein shall revert to the United States.

Section 3 of the bill is an amendment, which was added at the suggestion of the Treasury Department, which provides that:

> The conveyance shall contain the express conditions that Brown's Point Improvement Club shall move and reestablish the fence on the relocated south line of the said Coast Guard Reservation, and shall provide an access gate, and provide and maintain a suitable access road therefrom through that portion of the strip of land conveyed, and property owned by said club, in order to provide access from the Government



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property to Tonawanda Avenue, Brown's Point, and upon failure to do so title in that portion of the strip of land conveyed shall revert to the United States.

PURPOSE OF THE BILL

The Brown's Point Coast Guard Light Station Reservation is a tract consisting of 4.7 acres of dry land and 2.5 acres of tideland acquired by judgment dated July 12, 1901, in condemnation for $3,000 for the Department of the Treasury to be used as a lighthouse and Coast Guard station. On the basis of the original cost the 0.8085 acre of land that would be transferred by this bill would be worth $513.

The Brown's Point Improvement Club is a nonprofit community organization having as its purpose the promotion and development of the area and the provision of social and recreational activities for residents of Brown's Point, particularly the children. The club now occupies an area just south of the land sought to be conveyed. The additional land is sought by the club as necessary to the expansion of its activities.

The Treasury Department proposed three amendments to S. 3457. The first two amendments corrected typographical errors, to wit: the word "sixteenth" at line 4, page 2, of the bill was changed to "1/16", and the word "each" at line 10 on page 2 was changed to "east."

The third amendment recommended by the Treasury Department was a provision that the conveyance should contain an express condition that the Brown's Point Improvement Club should move and reestablish the fence on the relocated south line of the Coast Guard reservation, and should provide an access gate, and maintain a suitable access road through that portion of the strip of land conveyed, and property owned by the club, in order to provide access from the Government property to Tonawanda Avenue, Brown's Point, and upon failure to do so title in that portion of the strip of land conveyed should revert to the United States.

The Treasury Department informed the committee that, "The land sought to be conveyed is excess to the needs of the Coast Guard," and "The Treasury Department has no objection to the enactment of S. 3457 with the amendments proposed."

The amendments proposed by the Treasury Department have been incorporated in the bill.

Following is the text of a letter the chairman of your committee received relative to S. 3457:

TREASURY DEPARTMENT,
*April 13, 1956.*

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Interstate and Foreign Commerce,*
*United States Senate, Washington 25, D. C.*

MY DEAR MR. CHAIRMAN: Reference is made to the request of your committee for the views of the Treasury Department on S. 3457, to authorize the Secretary of the Treasury to convey certain property to the County of Pierce, State of Washington.

The bill would authorize and direct the Secretary of the Treasury to transfer by quitclaim deed to the County of Pierce, State of Washington, for public use through the Brown's Point Improvement Club

a 105-foot strip of land at the southern end of the Brown's Point Coast Guard Light Station Reservation in Pierce County, Wash.

The Brown's Point Improvement Club is a nonprofit community organization having as its purpose the promotion and development of the area and the provision of social and recreational activities for residents of Brown's Point, particularly children. The club now occupies an area just south of the land sought to be conveyed. The latter is desired by the club incident to the expansion of its activities. The land sought to be conveyed is excess to the needs of the Coast Guard.

It is recommended that the word "sixteenth" in line 4, page 2, of the bill be changed to "1/16", and that the word "each" in line 10, page 2 of the bill be changed to "east". It is further recommended that the bill be amended by the inclusion of a provision substantially as follows: "The conveyance shall contain the express conditions that the Brown's Point Improvement Club shall move and reestablish the fence on the relocated south line of the said Coast Guard reservation, and shall provide an access gate, and provide and maintain a suitable access road therefrom through that portion of the strip of land conveyed, and property owned by said club, in order to provide access from the Government property to Tonawanda Avenue, Brown's Point, and upon failure to do so title in that portion of the strip of land conveyed shall revert to the United States".

The Treasury Department has no objection to the enactment of S. 3457 with the amendments proposed.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

(Signed) DAVID W. KENDALL,
*Acting Secretary of the Treasury.*

There are no changes in existing law.

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Calendar No. 1988

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1971

# DISPOSAL OF WORLD WAR I ASSETS

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. JOHNSTON of South Carolina, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 2226]

The Committee on the Judiciary, to which was referred the bill (S. 2226) to authorize the Attorney General to dispose of the remaining assets seized under the Trading With the Enemy Act prior to December 18, 1941, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

1. On page 3, line 3, strike all of section (c) and insert in lieu thereof the following:

(c) to transfer to the Secretary of the Treasury the cash credited on the books of the Attorney General in trust numbered 6179, Osterreichisch Ungarische Bank, Vienna, maintained with respect to property or interests acquired by the United States prior to December 18, 1941, under the Trading With the Enemy Act, as amended. So much of such cash as shall be certified to the Secretary of the Treasury by the Attorney General to be the property of Czechoslovakia and Poland shall be carried with the Treasury in accounts in the names of Czechoslovakia and Poland blocked in accordance with Executive Order 8389 of April 10, 1940, as amended. So much of such cash as shall be certified to the Secretary of the Treasury by the Attorney General to be the property of Rumania shall be covered by the Secretary of the Treasury into the Rumanian Claims Fund created by section 302 of the International Claims Settlement Act of 1949, as amended, and shall be subject to disbursement under section 309 of that Act.

2. On page 3, line 16, strike the word "the" at end of line and insert the following:

for deposit in the Treasury as miscellaneous receipts all



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3. On page 4, strike lines 3 through 17 and insert in lieu thereof the following:

Upon such transfer, the Attorney General shall publish notice thereof in the Federal Register, together with notice of the rights conferred by this subsection upon any person having any claim with respect to any cash so transferred. Within two years after the publication of such notice, any person having any claim to any cash so transferred may file in the District Court of the United States for the District of Columbia an action against the United States for the recovery of the cash so claimed. Upon the filing of any such action, such court shall have jurisdiction to hear and determine such claim, and to enter judgment against the United States for such sum, if any, as the court may determine to be the amount to which such claimant would have been entitled to receive from any such account if the transfer authorized by this subsection had not been made, except that the amounts so determined to be payable shall be subject to the provisions of any applicable blocking regulations issued under Executive Order Numbered 8389, dated April 10, 1940, as amended, which remain in force at the time of the entry of such judgment; and

## PURPOSE OF AMENDMENTS

1. The purpose of the first amendment is to bring this bill into conformity with the provisions of Public Law 285 of the 84th Congress which was enacted subsequent to the introduction of this legislation.

2. The purpose of the second and third amendment is to provide a means for the final disposition of non-German claims against assets vested during World War I.

## PURPOSE

The purpose of the proposed legislation, as amended, is to provide for transfer of certain assets vested by the United States during World War I to the United States Treasury for ultimate disposition.

## STATEMENT

The Office of Alien Property of the Department of Justice now holds property of a value of approximately $800,000 as the result of vesture of alien enemy property during World War I. According to the Department of Justice, which recommended this legislation, the Department has gone as far as it can under existing statutory law to dispose of World War I assets. The pending legislation is necessary in order to complete disposition.

The character of the property and the reasons for its retention are set forth in detail in the letter of transmittal which accompanied the proposed legislation and which is appended to this report. Briefly, the assets consist of claims, unprocessed because of the small value of the assets or lack of prosecution by the claimants, unallocated interest attributable to vested World War I assets and the reserve maintained to protect against errors in the distribution of interest, assets of the Austro-Hungarian Bank, and certain participating certificates issued by the Secretary of the Treasury pursuant to section 25 of the Trading With the Enemy Act.

The largest portion of these assets in terms of value may be characterized as derelict claims. Some of these claims have been abandoned by the claimants, primarily because the expense of establishing the claim would exceed the award gained thereby. Other claims, although timely filed, have not been processed because the whereabouts of the claimant is unknown and cannot be established. In these cases it is

entirely possible that the claimants are deceased. According to information furnished by the Department of Justice, the total value of the abandoned claims is $188,837.09, while the claims of persons whose whereabouts are unknown and the de minimus claims total approximately $176,969.21. In addition to these amounts, the Office of Alien Property continues to hold a sum ($176,343.64), which represents unallocated interest attributable to World War I assets. Under applicable statutes, the Office of Alien Property was required to allocate to each account the interest earned during vestiture. This was done currently and the amount now held by the Office of Alien Property represents the remainder of the interest earnings on hand when distributions were halted. Distribution of this sum was not effected according to the Department of Justice because it would have been impractical to attempt to ascertain the share of each account, that is, the sum to be credited would have been so small as to place in question the justification for the expense of distribution.

The Office of Alien Property also holds $2,160.94 which represents a reserve maintained to protect against errors in the distribution of interest earnings. This balance, like the unallocated interest, is to be transferred to miscellaneous receipts in the Treasury under the provisions of this bill. In fact, under the proposed bill, all of the amounts heretofore discussed, totaling $544,310.88, will be covered into the miscellaneous receipts of the Treasury.

In addition to the transfers in the foregoing categories, the legislation, as amended, also provides for the transfer from the Office of Alien Property to the Secretary of the Treasury as miscellaneous receipts, assets totaling $45,326.53. This figure represents the total amount of the claims of Poles, Czechs, Bulgarians, Hungarians, and Rumanians, which were timely filed against World War I assets but which for one reason or another have not been prosecuted to completion. The Office of Alien Property believes that many of these claimants are now behind the Iron Curtain and therefore are unable to prosecute their claims. The Government has maintained these accounts upon their books since approximately 1929 and the legislation, as recommended by the Department would merely transfer the accounts to the Secretary of the Treasury. The committee, however, deems it advisable to cover these funds into the Treasury of the United States and provide a judicial remedy which will expire at the end of 2 years as an effective means of disposal of these assets while still respecting the rights of these claimants. To illustrate the nature of these claims, the information before the committee shows that the Czechoslovak account has a balance of $20,733.06. Ninety-five claims are now pending against this amount. Of these 95 claims, 29 involve amounts ranging from $1 to $15, 19 involve amounts from $16 to $25, 14 involve sums of from $26 to $50 and 24 claims involve between $50 and $500. There is only one claim against this amount involving more than $3,600.

It is obvious from this recital that the claims involved are very small and that the maintenance of individual accounts in the United States Treasury, as originally proposed, would only create an unjustifiable economic and administrative burden.

Aside from these transfers to the miscellaneous receipts of the Treasury, the Office of Alien Property is authorized by this legislation to transfer other World War I assets now held by the Office to the

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Secretary of the Treasury to be disposed of by him. These assets include certain assets which have not been liquidated, cash credited on the books of the Office of Alien Property to the Austro-Hungarian Bank, and certain participating certificates issued by the Secretary of the Treasury prusuant to section 25 of the Trading.With the Enemy Act.

The unliquidated assets consist of three remainder interests in decedents' estates and of certain bonds issued by German municipalities now behind the Iron Curtain. If liquidation were presently possible these assets could be transferred to the German special deposit account under Public Law 375, 80th Congress. Consequently, this legislation provides for the transfer of these assets to the Secretary of the Treasury for liquidation and deposit in accordance with statutory law, except that the Secreatary is authorized to destroy or abandon any asset so transferred, if in his sole discretion, the asset is worthless or possesses a value less than the cost of liquidation.

The assets of the Austro-Hungarian Bank were by international agreement payable to the Governments of Austria, Italy, Yugoslavia, Czechoslovakia, Poland, and Rumania. The proportionate share to which each nation was entitled was worked out by the liquidators and approved by the Governments involved. The first three named nations received their proportionate share of these assets in 1950 when the Office of Alien Property released $154,127.21 out of the deposited funds to the liquidators of the bank. Though required by law to make the payment to the liquidators, the Office of Alien Property specified in the return that the funds were for the benefit of the nations listed, permitting, however, the retention of fees by the liquidators and attorneys. Under the current proposal the provision of law requiring payment to the liquidators is stricken and provision is made for payment directly to the government of the nations involved. However, of the 3 nations to receive payment, 2 are subject to blocking of assets under Executive Order No. 8389 of April 10, 1940 (Czechoslovakia and Poland) and the third (Rumania) is subject to the provisions of Public Law 285, 84th Congress, governing the vesting and liquidation of Bulgarian, Hungarian, and Rumanian property. Consequently, under the terms of S. 2226, as amended, the funds of the Austro-Hungarian Bank transferred to Czechoslovakia and Poland are transferred subject to the blocking order and the funds payable to Rumania are to be disposed of in accordance with the terms of Public Law 285, 84th Congress (69 Stat. 562).

S. 2226 also provides for the transfer to the Secretary of the Treasury of certain participating certificates issued pursuant to section 25 of the Trading With the Enemy Act. These participating certificates have a face value of $57,419,820.73 but no actual value at the present time. Nor is it likely the certificates will again have any value, for the payment of the certificates is contigent upon Germany recognizing and paying its obligations under the Debt Funding Agreement of 1930. Only three payments were made under this agreement and by the terms of the Harrison resolution of June 27, 1934 (48 Stat. 1267) Congress directed that so long as Germany was in arrears under the Debt Funding Agreement of 1930, all transfers of money or other property under the Trading With the Enemy Act and Settlement of War Claims Act should be postponed except transfers for the payment of awards of the Mixed Claims Commission and transfers to such

classes of persons as the President in his sole discretion might permit. After passage of the Harrison resolution, Executive orders were issued removing the restrictions as to all transfers except those to German nationals.

On account of Germany's default under the Debt Funding Agreement of 1930, only the first seven of the priorities established under the Settlement of War Claims Act of 1928 had been paid by August 1947. In other words, the funds deposited in the German special deposit account had been insufficient to satisfy all of the awards of the Mixed Claims Commission established earlier to adjudicate damages occasioned during World War I and to permit any payments on the participating certificates issued by the Treasury, which by 1947 had come into the possession of the Office of Alien Property as successor to the Office of Alien Property Custodian. Public Law 375, 80th Congress, approved August 6, 1947 (61 Stat. 789), directed that the proceeds of liquidation of the assets subject to the prohibition of the Harrison resolution be deposited in the German special deposit account. In addition, Public Law 375 rearranged the order of priority of the unpaid obligations so that all of the obligations owing to Americans and to the United States Government would be satisfied prior to the payment of any amounts on the participating certificates held by the Office of Alien Property or on awards to Germans by the war claims arbiter. In this way, the assets subject to the prohibition of the Harrison resolution were made available to the American holders of Mixed Claims Commission awards. At the same time, the possibility of redemption of the participating certificates was rendered more remote.

The outbreak of World War II in 1939 resulted in the virtual cessation of the return of assets not prohibited under the Harrison resolution. With the end of the war the program of returning such assets was resumed and has been carried forward as far as possible for the time being. Public Law 375, 80th Congress, made possible the disposition of virtually all the assets subject to the prohibition of the Harrison resolution.

The administration of the World War I vesting program by the Office of Alien Property has already covered a period of nearly 40 years. The residue of assets remaining cannot be disposed of under existing statutes. Consequently, there is no likelihood that the program may be completed unless and until the instant legislation is approved.

The committee agrees with the Department of Justice that the early completion of this program is desirable and since the legislation, as amended, appears to afford the best opportunity to accomplish the termination of World War I vesting activities, the committee recommends favorable consideration of this measure.

Appended to this report is the letter of transmittal and the memorandum of explanation which accompanied the draft of the proposed legislation.

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JUNE 7, 1955.

The VICE PRESIDENT,
*United States Senate, Washington, D. C.*

DEAR MR. VICE PRESIDENT: There is attached for your consideration and appropriate action a legislative proposal to authorize the Attorney General to dispose of the remaining assets seized under the Trading With the Enemy Act prior to December 18, 1941. An explanation of the proposed legislation accompanies the draft.



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In reviewing the functions of the Department of Justice some time ago I found that through the Office of Alien Property the Department was still administering assets seized by the United States under the Trading With the Enemy Act during World War I. I thereupon directed that special efforts be made to terminate the World War I program.

In complying with my directive the Director of the Office of Alien Property encountered a great variety of problems owing to the complexity of the legislation affecting World War I alien property and the complexity of pending claims to certain of the remaining property. In addition, the great length of time which has passed since the seizure of the property, and the intervention of World War II, raised difficulties in obtaining evidence of ownership in connection with claims, and it was necessary in many instances to enlist the aid of foreign embassies and to make investigations abroad in order to gather such evidence.

As a result of the effort expended during the past 2 years the World War I program has reached the point where further progress cannot be made without the enactment of additional legislation.

Accordingly, early introduction and enactment of the enclosed legislative proposal is considered most desirable.

The Bureau of the Budget has advised that there is no objection to the submission of this recommendation.

Sincerely,

_____ _____,
*Attorney General.*

EXPLANATORY STATEMENT ACCOMPANYING LEGISLATIVE PROPOSAL

"To authorize the Attorney General to dispose of the remaining assets seized under the Trading with the Enemy Act prior to December 18, 1941."

The attached legislative proposal is designed to accomplish the termination of the administration by the Department of Justice through its Office of Alien Property of assets derived from the World War I seizures of enemy property and interests under the Trading with the Enemy Act. These assets, which cannot be disposed of under present law, consist of approximately $793,000 in cash, a few items of small or doubtful value which cannot now be liquidated, and certain Treasury certificates held by the Office of Alien Property. Other assets derived from World War I seizures are also in the custody of the Office of Alien Property at the present time but will shortly be disposed of under existing law.

A summary of a portion of the history of the administration of property seized during World War I under the Trading with the Enemy Act, as amended, will afford a clearer understanding of the provisions of the draft legislation, a section-by-section analysis of which is herein contained.

The Trading with the Enemy Act, which was passed on October 6, 1917, authorized the seizure of assets in the United States owned by an "enemy or ally or enemy" as defined in section 2 of the act. Section 9 provided for administrative and judicial returns of seized assets to former owners who established that they were not enemies or allies of enemies. The Winslow Act of March 4, 1923 (42 Stat. 1511) authorized the return of seized property up to $10,000 in value to former enemy owners of such property.

In 1922 the United States and Germany entered into an agreement (42 Stat. 2200) which created the Mixed Claims Commission, United States and Germany, for the purpose of adjudicating claims of the United States and its nationals against Germany for certain loss or damage arising out of World War I. The agreement provided no means for the satisfaction of awards made by the Mixed Claims Commission. This lack was remedied by the Settlement of War Claims Act of 1928 (45 Stat. 254), which also provided for the return of seized German property in addition to that returned under the Winslow Act and for the adjudication and payment by a War Claims Arbiter of certain claims of German nationals against the United States. More particularly, the Settlement of War Claims Act of 1928 amended the Trading with the Enemy Act to authorize the immediate return of 80 percent of the property still held by the Alien Property Custodian after the payment of $10,000 under the Winslow Act. However, return of 80 percent of his property to a claimant was made contingent upon his filing a a written consent to the postponement of the return of the remaining 20 percent.

The Settlement of War Claims Act created an account in the Treasury Department designated as the German special deposit account which was composed of—

(1) The 20 percent of German property temporarily withheld from return by the Alien Propery Custodian;

(2) certain other funds eventually returnable to German nationals consisting of their share of unallocated interest earned from the lump-sum investment of seized assets by the Secretary of the Treasury;

(3) amounts appropriated by Congress in connection with the payment of awards to German nationals by the War Claims Arbiter; and

(4) all amounts received by the United States, whether before or after the enactment of the act, for application in payment of awards of the Mixed Claims Commission.

The source of item 4 at the date of the passage of the act was the annual reparations payment received by the United States from Germany under the Dawes plan.

Pursuant to a directive in the act, the Treasury issued to the Alien Property Custodian or to the Attorney General, as his successor, participating certificates bearing interest at the rate of 5 percent for withheld German property deposited in the German special deposit account and non-interest bearing participating certificates for the amounts of unallocated interest deposited in the account. The total face value of the two types of certificates is $57,419,820.73.

The Settlement of War Claims Act also directed the Treasury to make payments from the German special deposit account in discharge of certain obligations in the order of priority specified as follows:

1. Administrative expenses.

2, 3, 4 and 5. Installments of awards entered on behalf of Americans by the Mixed Claims Commission, up to a maximum of 80 percent.

6 and 7. Awards to Germans by the War Claims Arbiter up to a maximum of 50 percent.

8. Five percent interest on the participating certificates held by the Alien Property Custodian by virtue of his transfers of the 20 percent of German property temporarily withheld from return.

9. Interest on unpaid amounts of awards of the Mixed Claims Commission and the War Claims Arbiter.

10. (*a*) Repayment to the Alien Property Custodian of the 20 percent withheld German property evidenced by the participating certificates; (*b*) payment of balances of awards of the War Claims Arbiter; (*c*) payment of balances of awards of the Mixed Claims Commission.

11. Repayment to the Alien Property Custodian of the amount of unallocated interest returnable to Germans evidenced by the participating certificates.

12. Payment of the amounts of awards of the Mixed Claims Commission to the United States Government for its own account.

13. Payment into the Treasury of any remaining amounts.

Thus, the Settlement of War Claims Act was intended to dispose of the war claims of the United States, its nationals and German nationals and to effect an immediate 80 percent and ultimate 100 percent return of German property seized under the Trading With the Enemy Act. As it developed, however, the funds originally provided in the act for deposit in the German special deposit account were insufficient to satisfy the above listed obligations. As a result, the United States and Germany entered into an agreement known as the Debt Funding Agreement of 1930 (46 Stat. 500). By its terms, the United States, in lieu of payments received under the Dawes plan, accepted Germany's obligation to make 103 semiannual payments in dollars, equivalent to 40,800,000 reichsmarks each and accepted 103 German Government bonds as evidence of the obligation. It was intended that as the bonds were redeemed by Germany, the proceeds were to be deposited in the German special deposit account and applied on the obligations payable therefrom. In this way sufficient funds would be available over the years to satisfy all the obligations. However, Germany made only three payments and defaulted in 1931.

By the Harrison resolution of June 27, 1934 (48 Stat. 1267) Congress directed that so long as Germany was in arrears under the Debt Funding Agreement of 1930, all transfers of money or other property under the Trading With the Enemy Act and Settlement of War Claims Act should be postponed except transfers for the payment of awards of the Mixed Claims Commission and transfers to such classes of persons as the President in his sole discretion might permit. After passage of the Harrison resolution, Executive orders were issued removing the restrictions as to all transfers except those to German nationals.

On account of Germany's default under the Debt Funding Agreement of 1930, only the first seven of the above-listed priorities had been paid by August 1947.

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In other words the funds deposited in the German special deposit account had been insufficient to satisfy the awards of the Mixed Claims Commission and to permit any payments on the participating certificates issued by the Treasury, which by 1947 had come into the possession of the Office of Alien Property as successor to the Office of Alien Property Custodian. Public Law 375, 80th Congress, approved August 6, 1947 (61 Stat. 789), directed that the proceeds of liquidation of the assets subject to the prohibition of the Harrison resolution be deposited in the German special deposit account. In addition, Public Law 375 rearranged the order of priority of the unpaid obligations so that all of the obligations owing to Americans and to the United States Government would be satisfied prior to the payment of any amounts on the participating certificates held by the Office of Alien Property or on awards to Germans by the War Claims Arbiter. In this way, the assets subject to the prohibition of the Harrison resolution were made available to the American holders of Mixed Claims Commission awards. At the same time, the possibility of redemption of the participating certificates was made more remote.

The outbreak of World War II in 1939 resulted in the virtual cessation of the return of assets not prohibited under the Harrison resolution. With the end of the war the program of returning such assets was resumed and has been carried forward as far as possible for the time being. Public Law 375, 80th Congress, made possible the disposition of virtually all the assets subject to the prohibition of the Harrison resolution.

As a result, the assets remaining to be disposed of by the proposed bill consist of: (1) Non-German funds which are not claimed by anyone or, for reasons explained below, cannot be paid to claimants, (2) German-owned items which cannot be transferred to the German special deposit account under Public Law 375 because they cannot presently be reduced to cash, and (3) the participating certificates issued by the Treasury and held by this Office. Set forth below is a section analysis of the draft legislation which describes these assets more particularly and explains the proposed treatment to be accorded them.

Section 1 (a) is concerned with the following four accounts:

1. *Trust No. 47667, consolidated unclaimed balances account, which contained $188,837.09, as of January 31, 1955.*—This account is made up for the most part of non-German funds for which no claims were filed. The balance of the account consists of non-German funds for which claims were once filed but subsequently abandoned and of small supplementary sums payable on once-paid non-German claims for which the claimants have never come forward.

2. *Trust No. 47669, unpayable balances account, which contained $176,969.21, as of January 31, 1955.*—This account consists in part of non-German funds claimed by persons whose whereabouts are unknown because of death or change of residence. The remainder of the account consists of a number of small sums ranging from 50 cents to $15 allocated to non-German claimants upon final audit. These sums were deemed either by the claimant or by the Government to be too small to justify the expense of establishing a basis for payment.

3. *Government earnings.*—Interest account which contains $176,343.64. This sum is the balance of certain interest amounting to more than $34 million earned as a result of the Treasury's investment of the cash proceeds of seized assets under section 12 of the Trading With the Enemy Act. The Winslow Act of 1923 provided that future earnings of seized assets should be paid to the former owners. The Settlement of War Claims Act of 1928 provided that the interest earnings which had accrued prior to the Winslow Act plus subsequent interest on such accrued earnings should be credited to the accounts of former owners in proportion to the amounts of cash derived from their seized assets. That act also directed that actual distribution of such credited sums be made to non-Germans immediately. Eventually it became necessary to discontinue these distributions because of the cessation of interest earnings. The amount of $176,343.64 is the remainder of the interest earnings on hand when distributions were halted. These funds were not distributed because it would have been impractiable to attempt to ascertain the share of each non-German claimant. Further, any sums which might have been established would have been too small to justify the expense of distribution.

4. *Undistributed income.*—Interest reserve, which contains $2,160.94. The allocation of current earnings after the passage of the Winslow Act was made semi-annually and involved a great number of calculations. A balance of $2,500 was reserved at the time of each allocation to provide for the cor-

rection of any errors which might be later discovered. The sum of $2,160.94 is the balance remaining after the last allocation.

Inasmuch as all the above-described funds are in effect derelict property and, as a practical matter, cannot be paid to proper claimants, Section 1 (*a*) is drawn to transfer them to the Treasury for the benefit of the United States.

Section 1 (*b*) deals with a few items of German-owned property which cannot be converted to cash and thus cannot be transferred to the German special deposit account under Public Law 375, 80th Congress. These items consist of three remainder interests in decedents' estates and of certain bonds issued by German municipalities now behind the Iron Curtain. Section 1 (*b*) provides that they shall be transferred to the Secretary of the Treasury who is to liquidate them, if possible, and credit the proceeds of liquidation to the German special deposit account. The Secretary of the Treasury is given the authority to destroy or abandon the bonds and remainder interests if he should ultimately determine them to have no value or to be worth less than the cost of liquidation.

Section 1 (*c*) is concerned with seized assets which were the property of a liquidated bank, the Austro-Hungarian Bank. All the seized assets have been returned for the benefit of certain governments except the sums of $87,294.12; $30,767.58; and $87,294.12, which are payable to the Governments of Czechoslovakia, Poland and Rumania, respectively. Section 1 (*c*) would authorize the transfer of these sums to accounts in the Treasury to be blocked under Executive Order No. 8389, as amended. Blocking controls are exercised under this Executive order with respect to assets of Iron Curtain countries and their nationals which were located in the United States prior to its entry into World War II.

Section 1 (*d*) relates to the following accounts:

1. Trust No. 47675, Polish claimants, containing $14,030.39.
2. Trust No. 47677, Czech claimants, containing $20,733.06.
3. Trust No. 47687, Bulgarian, Hungarian and Rumanian claimants, containing $10,563.08.

The funds in these accounts were claimed prior to World War II by nationals of the respective countries. Very little information has been received concerning any of the claimants since the end of the war and no payments have been made on their claims since these countries came under Communist control. Section 1 (*d*) would authorize the transfer of the funds in these accounts to accounts in the Treasury in the names of the various claimants. The accounts in the Treasury would be blocked under Executive Order No. 8389, as amended. The Secretary of the Treasury would be authorized to approve the claims at such time as proof could be made, subject, however, to any restrictions in existence pursuant to Executive Order No. 8389, as amended.

Section 1 (*e*) is concerned with the participating certificates which have been issued against the 20 percent withheld German property and the interest earnings payable to Germans. Under existing law any funds ultimately payable on the certificates by reason of future German redemption of bonds issued under the 1930 Debt Refunding Agreement would be earmarked for German claimants. In this connection, it is pertinent to note an agreement ratified by the Senate on July 13, 1953, known as the Agreement between the United States and the Federal Republic of Germany Relating to Indebtedness of Germany for Awards Made by the Mixed Claims Commission, United States and Germany. By this agreement, the West German Government bound itself to pay to the United States a total of $97,500,000 in installments over the next 26 years, to be used in full discharge of Germany's obligations with respect to awards of the Mixed Claims Commission to private United States nationals. The German Government also agreed to issue new bonds to the United States as evidence of these obligations. The United States agreed that upon receipt of the newly issued bonds it would cancel and deliver those of the defaulted bonds it holds under the Debt Refunding Agreement of 1930 which bear dates of maturity on or prior to March 31, 1943.

It is extremely unlikely that any provision will ever be made for the redemption of bonds issued under the Debt Refunding Agreement of 1930 in addition to those covered by the agreement described in the preceding paragraph. Furthermore, if such redemptions did occur, the present provisions of the Settlement of War Claims Act of 1928, as amended, would give the Mixed Claims Commission awards in favor of the United States Government a priority over payments to German claimants whose assets are represented by the participating certificates. In essence, therefore, the participating certificates held by this Office are fictitious assets insofar as this Office is concerned and are merely evidence of claims against their own Government insofar as Germans are concerned. It would appear to be unnecessary for this Office to continue to hold these certificates. Accordingly,

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section 1 (*e*) of the draft bill would authorize the Attorney General to transfer them to the Secretary of the Treasury pending their ultimate disposition.

Section 2 would bar any claims to the assets transferred to the Treasury except those placed in blocked accounts and would bar the imposition of liens and other encumbrances against the transferred assets.

Section 3 would repeal a provision of the Trading With the Enemy Act prohibiting disposition of the Austro-Hungarian Bank funds described above other than to the liquidators of the bank.

Section 4 contains a definition of the word "person" which is used in section 2 of the Trading With the Enemy Act, as amended.

O

Calendar No. 2000

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1983

# ANNUITIES TO WIDOWS AND DEPENDENT CHILDREN OF JUDGES

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 3410]

The Committee on the Judiciary, to which was referred the bill (S. 3410) to amend title 28, United States Code, to provide for the payment of annuities to widows and dependent children of judges having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

### AMENDMENTS

1. On page 5, line 2, after the comma, insert "(g),".
2. On page 5, line 14, after the word "at" insert the words "4 per centum per annum to December 31, 1947, and".
3. On page 5, line 14, strike the comma following the word "annum" and insert the word "thereafter,".
4. On page 8, line 12, after the word "any" insert the words "dependent child who is an".
5. On page 8, line 21, strike the word "such".
6. On page 9, line 5, after the word "at" insert the words "4 per centum per annum to December 31, 1947, and".
7. On page 9, line 14, strike the comma following the word "annum" and insert the word "thereafter,".
8. On page 10, line 14, after the word "at", add the words "4 per centum per annum to December 31, 1947, and".
9. On page 10, line 14, strike the comma after the word "annum" and insert the word "thereafter,".



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## PURPOSE OF THE AMENDMENTS

The amendments set forth in the bill are of a formal and technical nature.

## PURPOSE

The purpose of the proposed legislation, as amended, is to provide for the payment of annuities to widows and dependent children of judges.

## STATEMENT

This legislation has been recommended by the Judicial Conference of the United States.

Congress has provided for the retirement of public servants generally under the civil-service retirement system [1] and has also provided retirement plans for the armed services, the Tennessee Valley Authority, the Foreign Service, the Federal Reserve System, the Public Health Service, the Federal judiciary, the judges of the Tax Court, Canal Zone employees, and many others. Over 5 million employees, civilian and military, are covered by these Federal retirement systems. Within the framework of the Civil Service Retirement Act, Congress has also provided a retirement system for Members of Congress and for survivorship annuities for widows and dependent children of Members of Congress who die in office or after retirement.[2] There is, however, no provision for survivorship benefits for the widows of Federal judges who die either before or after retirement.

Civil-service retirement provisions have been in existence since as early as 1920 and the Civil Service Retirement Act of May 29, 1930, included provisions not only for retirement benefits to employees, but also for surviving dependents of retired employees. Retirement and annuity plans are also in existence under the social-security legislation covering private industry generally and under the railroad retirement plan for railroad employees.[3] Outside of social security and railroad retirement there are in many industries retirement plans. These do not generally include survivorship rights in the form of annuities, except for dependents of retired employees who have taken a reduced annuity to provide such protection. They do, however, ordinarily include death benefits for dependents. In short, in respect of both the Government service and private industry it has come to be recognized that an officer or employee should have retirement and survivorship benefits.

To insure an independent judiciary the Constitution provides that United States judges shall hold their offices during good behavior and that they shall receive for their services a compensation which shall not be diminished during their continuance in office. But this terminates with death, and Congress has not provided for annuities to the surviving dependents of judges as it has, as above stated, for the

[1] 5 U. S. C. secs. 691 et seq.

[2] The provisions of the plan are set forth in the Civil Service Retirement Act of May 29, 1930 (46 Stat. 468), as amended through August 2, 1946, by sec. 602 of the Legislative Reorganization Act (60 Stat. 850). The act of February 28, 1948 (62 Stat. 48), further amended sec. 3A by eliminating contine deductions for Members of Congress and by reducing interest on the individual accounts of such Members from 4 to 3 percent. The act of March 6, 1954 (68 Stat. 23), made applicable to Members of Congress the provisions of sec. 4 (b) and (c) with respect to annuities for the survivors of retired officers, the provisions of sec. 9 with respect to credit for past service, and the provisions of sec. 12 with respect to annuities to widows and dependent children of officers who die in active service, all as amended and liberalized by the act of February 28, 1948. Otherwise the amendments to the Retirement Act made by the act of February 28, 1948, and acts subsequent thereto do not apply to Members of Congress. See 62 Stat. 49, sec. 3 (a).

[3] Social security, 42 U. S. C. secs. 401 et seq.; railroad retirement, 45 U. S. C. secs 228a et seq.

dependents of nearly all other public servants. Under present tax conditions and dollar purchasing power, the difficulties of a judge in providing adequately for his dependents, even under the increased salary scale, are great. Insurance programs instituted by judges prior to their elevation to the bench are in many instances now inadequate in view of the decreased purchasing power of the dollar. Even upon retirement from active service a judge cannot augment his income—for he cannot retire from active service until age 70 after 10 years' service or age 65 after 15 years' service,[4] and then in most cases it is too late for him to establish an earning capacity. Moreover, except in the very rare case of a judge who retires by resignation from office after age 70 [5] judicial "retirement" is a misnomer. For a judge who retires from active service under section 371 (b) of title 28, United States Code, still remains in commission as a judge, is forbidden to practice law, and may be assigned to perform such judicial duties in any circuit as he is willing to undertake.[6] Other Federal officials may be retired in their early sixties (some as early as 50), are freed from all official duties, and are under no occupational restrictions.

Compensation and conditions of service should be adequate to meet current needs for family support and education and to provide moderate security for a judge's widow in the event of his death. The retirement provisions just referred to fail to provide for the widow and dependent children of a judge whether he dies when on active service or when he is in retirement status. If a pension system is adopted for widows and dependent children of judges who die either before or after retirement, it is desirable that it should follow the pattern now provided for widows and dependent children of Members of Congress

## Summary of Congressional System

To summarize the salient survivorship provisions of the civil-service retirement system as applicable to Members of Congress, the widow of a Member covered by the system who dies in office (after having served at least 5 years), if she has been married to him at least 2 years or is the mother of his child, shall be paid an annuity beginning after she reaches age 50 (or before that age if she has children under 18 or disabled) and continuing until death or remarriage, equal to half the potential retirement annuity earned by her husband up to the time of his death. This widow's annuity amounts to one-half of a sum equal to 2½ percent of the Member's average annual basic compensation since August 2, 1946, multiplied by his years of service as a Member of Congress and certain active service performed as a member of the Armed Forces and as a legislative employee plus 1½ percent of such average compensation multiplied by years of prior civilian governmental service. In no case is the widow's annuity to be more than 37½ percent of such average basic salary. In order that service as a Member of Congress or other prior civilian service may be counted in this computation either the deposit (based on the contribution rates in effect at various periods of time) required by the act must have been made with respect to such service or the Member's potential annuity must be reduced by an amount equal to 10 percent of the unpaid deposit with interest.

[4] 28 U. S. C. sec. 371 (b).
[5] 28 U. S. C. sec. 371 (a).
[6] 28 U. S. C. secs. 454, 294 (b).

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A widow with children would receive an additional annuity for each child equal to the lesser of (a) one-fourth of the Member's potential annuity, (b) $900 divided by the number of children, or (c) $360. If the Member leaves no widow but surviving children under 18 or incapable of self-support, each child would receive an annuity equal to the widow's annuity but not more than $1,200, divided by the number of children, or $480, whichever is lesser.

In the event of the death of a Member of Congress after retirement on annuity his widow (if under 50 and having children under 18) would receive an annuity as above stated until age 50 and the children also would receive annuities as above stated. If the Member retired having elected a reduced annuity so as to provide protection for his dependent survivors, his widow after age 50 would receive an annuity equal to one-half the amount of his regular retirement annuity before reduction.

Whether or not annuities are paid, lump-sum payments at the death of the Member or the last surviving annuitant are made if warranted by the principle embodied in section 12 of the Civil Service Retirement Act that amounts of retirement deposits or deductions not actually used for the payment of annuities shall be returned to the Member's designated beneficiary, next of kin, or estate. Such return is also made in case the Member dies in office after less than 5 years' service.

## THE PROPOSED BILL

The proposed bill seeks to make available to the widows and surviving dependent children of Federal judges substantially the same annuities as are now available for the widows and children of Members of Congress as above described. This is to be accomplished by adding a new section 376 to chapter 17 "Resignation and Retirement of Judges," of title 28, United States Code. Section 376 sets up a judicial survivors annuity fund in the Administrative Office of the United States Courts and provides that all United States judges may within 6 months after taking office or within 6 months after the enactment of the act (in the case of judges now in office) elect to come under the provisions of section 376. Provision is also made for a right of election to come under section 376 by the judges of the Territorial district courts. Upon making such election the provisions of section 376 setting up the judicial survivors annuity fund and providing for deposits in the fund would become applicable to the judge and upon his death (either in regular active service or retired from such service under sec. 371 (b) or 372 (a) of title 28, or after retirement from office on salary under sec. 371 (a) or 373 of title 28) his widow and surviving dependent children would receive annuities from the fund computed on substantially the same basis as in the case of annuities now payable from the civil service retirement and disability fund to the survivors of a Member of Congress who dies in office.

Thus the annuity of a widow of a judge would be a sum equal to 1¼ percent of the average basic salary of the judge multiplied by years of service and limited to a maximum of 37½ percent of such basic salary. But the average salary would be based upon the last 5 years of service prior to death instead of all service after August 2, 1946, as in the case of Members of Congress, thus conforming in effect to the practice in force with respect to all other officers and employees covered

by the Civil Service Retirement Act. And the allowable service to be considered in computing the widow's annuity would include service as a Member of Congress as well as judicial and military service and other prior civilian service.

Since the bill does not provide retirement annuities for judges (who, as has been pointed out, are now under a wholly different retirement system) but merely annuities for their survivors, the amount of deposit into the judicial survivors' annuity fund to be made with respect to their judicial service by judges electing to come under section 376 is fixed at 1½ percent instead of 6 percent, an amount approximating that portion of the 6 percent deposit required of Members of Congress which is applicable to survivor's annuities. This deposit is, however, required to be paid by retired judges out of their retirement salaries until death. In the case of a judge who resigns other than on salary under section 371 (a) or 373 of title 28, however, the deposit is returned and upon his subsequent death no survivorship annuities are payable. Moreover in order that judicial service prior to election to come under section 376 may be counted in the computation of the survivor's annuity, either the deposit must be made for the prior service with interest or the annuity must be reduced by 10 percent of the unpaid deposit with interest. This last provision is the same as that now accorded by section 9 of the Civil Service Retirement Act to Members of Congress and all other officers and employees in the civil-service retirement system.

Section 6 of the amended bill provides that judges presently retired and receiving salary may also elect to come under section 376 upon the same conditions. Section 7 provides that each living widow of a judge deceased prior to the passage of the act shall receive an annuity under the act to be computed as if the judge had died on the date of enactment of the act and had elected to bring himself under section 376 but had not made the required deposit. In such a case the annuity would be computed on the actual length of the judge's service and would be subject to the reduction of 10 percent with respect to the unpaid deposit and interest. A similar provision is made for the widows of judges who die within 6 months after the passage of the act without having filed an election to come under section 376.

Just as in the case of Members of Congress no annuities would be payable to the widow of a judge whose total allowable service was less than 5 years, nor to any widow who had been married to the judge for less than 2 years unless she was the mother of his child.

The draft bill departs from the present congressional survivorship annuity system in only four respects. The annuity is to be based on the average basic salary for the last 5 years of service instead of average salary since August 2, 1946. Service as a Member of Congress is to be included in addition to judicial, military and prior civilian service. The deposit to be required is 1½ percent of salary instead of being based on the various contribution rates applicable in the past under the civil-service retirement system (currently 6 percent). All living widows of deceased judges are to be included and not merely widows of judges who died on or after November 4, 1952. Each of these departures from the congressional plan appears to be fully justified.

Under section 4 (a) of the Civil Service Retirement Act an officer or employee may choose any 5 consecutive years of allowable service

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as the base for the average annual salary upon which his annuity and that of his widow is to be computed. In the case of a judge such option is unnecessary and unworkable since it would have to be exercised at his death and his last 5 years of service would in any event be as well compensated as any other similar period. Up to March 1, 1955, the congressional plan of an average salary since August 2, 1946, produced a similar result since the congressional salary rate was the same throughout that period. In view of the recent increase in congressional salaries it would seem appropriate that the congressional annuities also should be based on a 5 years' average as in the case of other officers and employees.

In view of the fact that the proposed judicial survivorship annuity system is patterned upon that of Members of Congress it is appropriate that their widows should have the benefit of their congressional service in computing judicial survivorship annuities.

The proposed judicial contribution of 1½ percent of salary appears to be appropriate, as compared with the 6-percent contribution made by Members of Congress, in view of the fact that it is intended to provide for survivors' benefits only and not for retirement benefits also, as does the congressional system. That the 1½-percent rate of contribution is justified from an actuarial standpoint is shown from the following memorandum submitted by Chief Actuary Robert J. Myers, of the Social Security Administration:

MEMORANDUM

MAY 26, 1955.

Subject: Preliminary actuarial analysis of proposed plan for survivor benefits for the Federal judiciary.

This memorandum will present the results of certain actuarial calculations and analysis that have been made in regard to the proposed plan for paying survivor benefits in respect to Federal judges within the framework of the Civil Service Retirement Act as it applies to Members of Congress. The principal feature of this plan, however, is that it provides only the survivor benefits and no retirement benefits; accordingly, the employee-contribution rate is lower (1½ percent versus 6 percent). Another important feature is that all existing widows are brought in for benefits, although with a reduction to allow for the contributions that would have been made in the past (but, of course, were not made) if the plan had always been in effect. It has been possible to make several different types of analyses using as the actuarial basis an interest rate of 3 percent and mortality rates according to the 1937 Standard Annuity Table set back 2 years (i. e. an individual aged 55 is considered as being age 53—so as to recognize the improvement in mortality in recent years).

The first analysis was to consider the existing unremarried widows who would qualify for annuities by reason of their husbands having had at least 5 years of service. Based on the data furnished, approximately 105 widows would qualify, with a total annual benefit rate of about $260,000, or an average annuity of about $2,500 a year. It might be noted that the reduction in the annuity (to allow for contributions not having been made) averaged about $200 a year (i. e., reduced from about $2,700 to $2,500). Thus, the first-year cost would be about $260,000, representing approximately 3.1 percent of

payroll (such payroll for the approximately 360 judges for whom data were available being about $8.4 million per year). The present value of the annuities which will be payable to the present group of 105 widows (allowing for mortality and interest) is about $2.88 million. In other words this sum invested at 3 percent interest would, together with such interest as would be earned thereon, just meet all future annuity payments to the initial group of widows. One way of expressing this cost as a long-range matter is to consider it as a perpetual debt upon which 3 percent interest must be paid. Then, this interest cost, when related to covered payroll, represents the level cost attributable to bringing in the existing group of widows. In this case, this level cost representing the initial group of widows amounts to 1.03 percent of payroll.

Another analysis that has been made is in regard to what is frequently called the normal cost of the plan, or, in other words, the level cost in respect to new entrants into the plan, with such cost being sufficient to meet all future benefits including lump-sum returns as well as annuity benefits to widows and children. (On the whole, the cost of children's benefits will be relatively negligible for the judiciary system proposed because although a significant number of judges have children, these children are generally close to age 18 so that there is only a short period of potential benefit receipt.) The normal cost has been computed on the assumption of a man entering at age 45, with a wife 2 years younger. The resulting figure is 5.47 percent of payroll, of which the judge would pay 1.50 percent.

Next, consider the overall cost of the plan which includes not only the cost for the initial group of widows and the normal cost, but also some allowance for the present group of judges who are well beyond the initial entry age. In the aggregate the level-cost of the proposed plan is about 8 percent of payroll, of which 1½ percent is payable by the judges. This level cost is, in effect, an average of the year-by-year projection of costs which, as indicated previously, start off at about 3 percent of payroll and will rise gradually over the years for the following reasons:

(*a*) The number of eligible widows will increase (since the number of Federal judges has been increased in recent years). Eventually, there will be more widows on the roll than those now in existence (who, in effect, arose from a smaller "exposure");

(*b*) The widows' annuities will be based more on the higher present salary levels, as contrasted with the lower ones of the past.

(*c*) The effect of reduction for not making contributions will become less important.

Thus, the cost of the program, expressed in terms of benefits payable in the given year to payroll of that year, will probably rise from somewhat more than 3 percent of payroll in the first year of operation to as much as 10 percent of payroll some decades hence, or as indicated previously with the average cost being about 8 percent of payroll.

From the above figures it might, at first glance, be thought that a contribution rate of 1½ percent from the judges is not an adequate amount since it represents only about 20 percent of the total cost of the program. It can well be argued, however, that this is not the case because the necessarily unusual characteristics of the judges (namely,

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a relatively older age at entry than is customary under most retirement plans such as those for civilian employees of the Federal Government) must produce higher retirement and survivor costs. This same situation holds true to somewhat the same extent in regard to Congressmen. The level cost of the civil-service retirement system is 14.6 percent of payroll, with 6 percent thereof coming from the employees (see p. 20 of pt. 4 of the Kaplan report, S. Doc. 89, 83d Cong.). No similar figures are available for the congressional plan, but it is undoubtedly the case that the corresponding figure therefor is 20 to 25 percent of payroll, considering the older ages at entry and the more liberal benefit features; accordingly the contribution rate payable by Members of Congress is probably only about 25 percent of the total cost of the plan.

The 1½-percent rate called for in the judicial plan can probably best be justified by considering what proportion of the civil-service retirement benefits are involved in the survivor benefits. Thus, exclusive of benefits involving return of contributions, the total normal cost of the civil-service retirement system is 9.70 percent of payroll (see p. 24 of the Kaplan report mentioned previously). Of this 9.70 percent, 1.67 percent of payroll, or 17 percent relatively represents the cost of monthly survivor benefits. The 1½ percent contribution rate proposed for the judicial system to provide only for survivor benefits is 25 percent of the 6 percent rate paid by Congressmen for retirement and survivor benefits. This proportion is well in excess of the 17 percent that the Congressmen might be said to pay and, accordingly seems to justify a contribution rate of 1½ percent for the judicial system for survivor benefits only.

ROBERT J. MYERS.

The congressional provision for survivor's annuities enacted March 6, 1954, included within its coverage the widows of Members of Congress who died on or after November 4, 1952. Section 7 of the amended bill proposes to extend its coverage to each living widow of a deceased judge upon the basis of her receiving the reduced annuity to which she would have been entitled if her husband had died on the date of enactment of the act having elected to come under section 376 but having not made any deposit for his past service. Under these circumstances the widow's annuity would be reduced, as required by the bill, by 10 percent of the unpaid deposit. It is believed that this provision, designed by the present law to cover the past service of those coming into the system for the first time, should be extended to the living widows of those deceased judges, numbering about 100, for whom no previous provision has been made. Congress has provided annuities for living widows of Justices of the Supreme Court by the enactment of section 375 of title 28 by the act of August 28, 1954 (68 Stat. 918). The draft bill would make modest provision for the living widows of other deceased Federal judges, the cost of which in the initial period of operations (approximately 3 percent of payroll) would be offset to a reasonable extent by the current contributions of judges taking advantage of the plan.

The bill will give present judges 6 months after its passage to file their elections to come under section 376. Judges may die within that initial period without having made such an election or even having knowledge of their right to do so. Accordingly provision is made that

such a judge shall be deemed to have filed an election immediately before his death.

Statements have been received by the committee from Chief Judge John Biggs, third circuit, and Judge Eugene Worley, of the Court of Customs and Patent Appeals. These statements are in support of this legislation and the report heretofore set forth is a summary of the salient portions of these statements, together with other data on file.

In view of the foregoing, the committee is of the opinion that this legislation is meritorious and recommends it to the Senate for favorable consideration.

A statement by Mr. Will Shafroth, of the Administrative Office of the United States Courts, together with accompanying tables, are hereto attached and made a part hereof. Also attached is a letter received from Chief Judge John Biggs, Jr.

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STATEMENT OF WILL SHAFROTH, CHIEF, DIVISION OF PROCEDURAL STUDIES AND STATISTICS, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Mr. Chairman and members of the committee, the cost of survivorship protection under the civil-service retirement system is 17 percent of the cost of the retirement system. Congressional retirement costs are higher but the proportion of the cost of survivorship benefits for Congressmen will approximate the same figure. If either the civil-service employees or the Congressmen contributed only for survivorship benefits at the present rate of contribution, they would only contribute 1 percent of payroll. The judges' contribution of 1½ percent of salary is modeled on this cost and provides for a contribution by judges similar in relation to its cost to the Government to the contribution by Congressmen for survivorship benefits. I should like to discuss particularly the recommendations of the Salary Commission with reference to widows' annuities, the congressional plan, the judicial contribution of 1½ percent of salary, the inclusion of present widows in S. 3410, the amount of pensions provided and the overall cost.

SALARY COMMISSION RECOMMENDATIONS

The Commission on Judicial and Congressional Salaries appointed pursuant to the act of August 7, 1953 (67 Stat. 485), in addition to its recommendations with regard to salaries of judges and Congressmen considered the question of widows' pensions. In its report dated January 15, 1954, it made the following recommendations on this subject:

"Although its statutory duties do not include the recommendations of adequate survivor pensions for widows and dependents of the officials whose salaries are the subject of this report, the Commission strongly suggests that the Congress should consider the very exhaustive task-force report of this Commission on that subject in order that in addition to the recommendations herein contained, appropriate legislation providing adequate contributory pensions for that purpose might be enacted. It is noted that unlike other Federal officers and employees, no provision whatever exists for pensions for widows and dependents of Justices of the Supreme Court of the United States

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and Federal judges, and inadequate provision is presently made for pensions for widows and dependents of Members of Congress. In the opinion of the Commission, this situation should be remedied promptly."

Among the recommendations of the task force on retirement benefits, staff expenses, office and other services furnished by the Federal Government were the following on widows' pensions:

"Much of the testimony and evidence introduced into the record during the hearings conducted by this Commission December 15, 16, and 17, 1953, favored an increase in the salaries of judges and Congressmen. But notwithstanding the disposition that may be made of this subject in the report of the full Commission, it is the opinion of your task force that action should be taken—

1. To revise, improve, and extend the present retirement system affecting Federal judges and Congressmen;

2. To provide a system for the payment of adequate annuities and survivor benefits to the widows and dependents of judges and Congressmen, including the Vice President and the Speaker of the House, that will be in keeping with the present-day trends and a credit to the honor and dignity of the Government."

With reference to Members of Congress, this recommendation was carried out by the passage of the act of March 6, 1954 (68 Stat. 21), which provides a pension for the widow of a Congressman dying in office in an amount equal to 1¼ percent of the average annual basic salary of such Member subsequent to 1946 (the date of the passage of the Legislative Reorganization Act) multiplied by the sum of his years of service as a Member of Congress and his years of active service in the Armed Forces.

The House Committee on Post Office and Civil Service in recommending this legislation made the following comment:

"As a result of the passing of several Members of Congress with long years of service, there has been criticism of the provisions which prevent widows of Members who die in office from receiving their annuities. At the same time Members who have retired may provide annuities for their widows on an actuarial basis. This situation, it is believed, was an oversight in original enabling legislation setting up the congressional retirement system. The committee amendment removes this inequity by making provision for survivor annuities on an actuarial basis for widows, widowers, and children of Members who die in office. Substantially the same benefits presently are provided for widows and children of retired Members of Congress and employees of the Federal Government under the civil-service retirement system.

"In general, it is the view of the committee that there are no provisions in the committee amendment relating to Members of Congress which give them any more rights than are presently given those Federal employees participating in the civil-service retirement system.

"Although the committee amendment makes certain changes in retirement benefits for Members of Congress, it does not make them any more liberal than the comparable present retirement provisions for other Federal employees. In many respects, the committee amendments are more restrictive.

"In most cases where the committee amendment adds additional benefits, it adds compensating requirements or obligations." (H. Rept. 1127, 83d Cong., 2d sess.)

Subsequently the act of August 11, 1955 (69 Stat. 692), added provisions giving Congressmen the right to count up to 15 years of service as a legislative employee on the same basis as congressional service and adding also years of other governmental service for which the widow would receive three-quarters of 1 percent of average annual basic salary multiplied by the years of such service. The report which has been filed by Judge Biggs gives full details of the present congressional pension plan.

The object of the Judicial Conference of the United States as explained by Judge Biggs is to secure similar protection for widows and dependent children of Federal judges other than the Justices of the Supreme Court whose widows, since the date of the report of the Salary Commission above referred to, have been granted a $5,000 noncontributory annuity (act of August 28, 1954, 68 Stat. 918).

## AMOUNT OF THE CONTRIBUTION

H. R. 6974 provides for a contribution of 1½ percent of salary. This amount was arrived at by segregating the cost of survivorship pensions from the cost of retirement annuities in the civil-service retirement system and applying that basis to the judiciary. The survivorship annuities under civil service account for 17 percent of the total cost. Exclusive of amounts of contributions returned because not used, the total normal cost of the civil-service retirement system is 9.70 percent of payroll of which 1.67 percent represents the cost of survivor benefits (Kaplan Report on Retirement Policy for Federal Personnel, pt. IV, p. 24, S. Doc. 89, 83d Cong., 2d sess.). The normal cost,[7] by type of benefit, of the civil-service retirement system is shown by the following table. The normal cost as percentage of payroll, if lump-sum payments are excluded, is 9.70 percent, including the survivor benefits which are 1.67 percent of payroll.

| Type of benefit | Normal cost as percent of payroll | Total normal cost as percent of payroll |
|---|---|---|
| Retirement benefits | | 8.03 |
| Age retirement | 5.94 | |
| Disability retirement | 1.12 | |
| Withdrawal deferred retirement [1] | .97 | |
| Survivor (monthly benefits) | 1.6 | 1.67 |
| Widows of deaths in active service | .91 | |
| Widows of deaths after retirement [2] | .61 | |
| Children of deaths in active service | .15 | |
| Lump sum | | 1.45 |
| Death in active service | .44 | |
| Death after withdrawal or retirement | .28 | |
| Withdrawal | .73 | |
| Total normal cost | 11.15 | 11.15 |
| (a) Payable by employee | 6.00 | |
| (b) Payable by employer | 5.15 | |

[1] Including immediate retirements on involuntary separation after 25 years of service.
[2] Additional cost of elective survivor benefits over cost of regular single-life annuities for retired employees. Also includes cost of automatic survivor benefits for widows and children of annuitants. (Kaplan Report, pt. IV, p. 24.)

[7] "Normal cost" as referred to in the Kaplan report is the level percentage of payroll which, at a given rate of interest, is the proper contribution rate required to support the benefits of a group of new entrants.



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There are no comparable figures for Congressmen since their survivorship provisions are of recent origin, but Mr. Myers estimates the cost of their survivorship benefits to be about the same proportion of total benefits, exclusive of amounts of contributions returned, as for others under the civil-service retirement system.

Since Congressmen and others under the civil-service retirement system contribute 6 percent of their salaries to the retirement fund, it is apparent that if they were only paying for survivor benefits and were contributing the same proportion of total costs as now, they would only pay 17 percent as much, or 1 percent of their salaries.

When survivorship provisions were added to the civil-service retirement system the employees' contribution was raised from 5 to 6 percent (act of February 28, 1948, 62 Stat. 48).

Federal judges covered by this bill, except those for the Territorial courts, are appointed for life and their salaries cannot be diminished during their lives. They have no retirement, in the ordinary sense, as they are still judges even after they are no longer in regular active service, except for the few (there are now only 5) who have resigned after reaching the age of 70, having had 10 years of service. Retired judges are not eligible to practice law, and continue to sit as judges provided they are willing to do so.

In this respect their condition is very different from that of Congressmen who must contribute the same as other Government employees to their retirement fund. The Judicial Conference has favored a survivor pension bill based on the congressional allowances. This bill in general follows the congressional plan as far as survivorship is concerned and the contribution to the retirement fund was fixed at 1½ percent because that was approximately the same (actually a little higher) than the percent which Congressmen would pay for survivorship on the same basis as their contribution for all retirement and survivor benefits.

### THE PRESENT WIDOWS

Present widows are included in S. 3410. The reason for including all living judicial widows is that if the legislation is proper at this time, it is a discrimination against the living widows of former judges not to give them the same protection since their husbands rendered the same service during their lifetimes. Moreover, the 10-percent reduction from the annuity of each widow to cover deposits in the fund for years of judicial service for which no contributions were made is equivalent in value to those deposits. The group of living widows is not large. About 111 are known who could qualify. The total amount of their pensions is estimated at about $275,000 per year or on the average about $2,500 each. The average age of these widows is 71 years. Their number includes some very old ladies and the total amount to this group will drop rather quickly.

It is true that the survivorship annuity for widows of Congressmen was only applied to those who became widows after November 4, 1952, but other widows customarily received a year's salary after the Congressman's death which would have been equivalent, as to those whose husbands had died after the last previous salary increase before 1954, to about 5 years' pensions for the judicial widows at the average rate of $2,500 a year that would be payable under the bill to living widows.

The inclusion of living widows has been the policy adopted in all pension bills for the judiciary going back to 1950 when a noncontributory bill was recommended by the Senate Judiciary Committee (S. 1308, 81st Cong., 2d sess.). Judge Biggs has already stated in his testimony that this provision is one which appears to the judiciary to be fair and to be fully warranted.

### THE AMOUNT OF THE PENSIONS

The annuities payable to widows of Federal judges under the bill are 1¼ percent of the average annual salary for the last 5 years multiplied by the sum of the years of service as judge, Congressman, member of the Armed Forces (not exceeding 5 years), or legislative employee (not over 15 years of service as legislative employee counted), plus three-quarters of 1 percent of the average annual salary for the last 5 years times the sum of the years of service in the executive branch of Government or other allowable Government service.

The rates are the same percentage of the base as in congressional survivorship benefits. The base is the average annual salary for the last 5 years, which is in essence the usual civil-service retirement system provision rather than the congressional base which is the average annual salary received by the Congressman as a Member of Congress since 1946 when the Reorganization Act was passed.

If the bill were in effect, the pension of the widow of a district judge dying on March 1, 1956, with 15 years of judicial service (or service totaling 15 years as judge, Congressman, member of the Armed Forces (not exceeding 5 years) or legislative employee) would be $2,712.96 if no deposit to cover back service had been made before his death. The base on which the the pension is figured is the average salary for the last 5 years, which would be $16,500. One and a quarter percent of this is $206.25. Multiplying this amount by the years of service, 15, gives $3,093.75 which would be the amount of the pension if the deposit for past service had been paid up. That deposit would amount to $3,807.89, including interest. If the deposit is not paid, the annuity is reduced by 10 percent of the deposit, or $380.79, leaving a balance to the widow of $2,712.96.

The following tables set out similar figures for service of district and circuit judges from 5 to 30 years in 5-year intervals, using the base of March 1, 1956, when the average salary for 5 years was $16,500 for district judges and for circuit judges, $19,100.

*Pensions of widows of judges of the United States courts of appeals, as of Mar. 1, 1956, under the provisions of the bill* [1]

| Years of service [2] | Pension under terms of the bill | Amount of deposit for past service | Amount of deduction if deposit is not made | Net pension if deposit is not made |
|---|---|---|---|---|
| 5 | $1,193.75 | $1,513.65 | $151.37 | $1,042.38 |
| 10 | 2,387.50 | 3,132.60 | 313.26 | 2,074.24 |
| 15 | 3,581.25 | 4,524.06 | 452.41 | 3,128.84 |
| 20 | 4,775.00 | 6,216.98 | 621.70 | 4,153.30 |
| 25 | 5,968.75 | 8,276.67 | 827.67 | 5,141.08 |
| 30 | 7,162.50 | 10,782.61 | 1,078.26 | 6,084.24 |

[1] Assuming contributions start Mar. 1, 1956. These figures are approximate in that the actual method of computing interest may produce slightly different results.

[2] This includes service as judge, Congressman, legislative employee (15 years) or member of Armed Forces (5 years). A minimum of 5 years of civilian service is required.

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*Pensions of widows of judges of the United States district courts as of Mar. 1, 1956, under the provisions of the bill* [1]

| Years of service [2] | Pension under terms of the bill | Amount of deposit for past service | Amount of deduction if deposit is not made | Net pension if deposit is not made |
|---|---|---|---|---|
| 5 | $1,031.25 | $1,307.05 | $130.71 | $900.54 |
| 10 | 2,062.50 | 2,694.72 | 269.47 | 1,793.03 |
| 15 | 3,093.75 | 3,807.89 | 380.79 | 2,712.96 |
| 20 | 4,125.00 | 5,162.22 | 516.22 | 3,608.78 |
| 25 | 5,156.25 | 6,809.99 | 681.00 | 4,475.25 |
| 30 | 6,187.50 | 8,814.74 | 881.47 | 5,306.03 |

[1] Assuming contributions start Mar. 1, 1956. These figures are approximate in that the actual method of computing interest may produce slightly different results.
[2] This includes service as judge, Congressman, legislative employee (15 years) or member of Armed Forces (5 years). A minimum of 5 years of civilian service is required.

By March 1, 1960, the average annual salary for 5 years will have increased to $22,500 for district judges and $25,500 for circuit judges. Similar tables showing pensions calculated on that base are set forth below:

*Pensions of widows of judges of the United States courts of appeals as of Mar. 1, 1960, under the provisions of the bill* [1]

| Years of service [2] | Pension under terms of the bill | Amount of deposit for past service | Amount of deduction if deposit is not made | Net pension if deposit is not made |
|---|---|---|---|---|
| 5 | $1,593.75 | $430.51 | $43.05 | $1,550.70 |
| 10 | 3,187.50 | 2,046.12 | 204.61 | 2,982.89 |
| 15 | 4,781.25 | 3,814.90 | 380.38 | 4,400.87 |
| 20 | 6,375.00 | 5,443.65 | 543.25 | 5,831.75 |
| 25 | 7,968.75 | 7,425.26 | 741.41 | 7,227.34 |
| 30 | 9,562.50 | 9,836.10 | 982.51 | 8,579.99 |

[1] Assuming contributions start Mar. 1, 1956. These figures are approximate in that the actual method of computing interest may produce slightly different results.
[2] This includes service as judge, Congressman, legislative employee (15 years) or member of Armed Forces (5 years). A minimum of 5 years of civilian service is required.

*Pensions of widows of judges of the United States district courts as of Mar. 1, 1960, under the provisions of the bill* [1]

| Years of service [2] | Pension under terms of the bill | Amount of deposit for past service | Amount of deduction if deposit is not made | Net pension if deposit is not made |
|---|---|---|---|---|
| 5 | $1,406.26 | $379.86 | $37.99 | $1,368.26 |
| 10 | 2,812.50 | 1,764.67 | 176.47 | 2,636.03 |
| 15 | 4,218.75 | 3,264.24 | 326.42 | 3,892.33 |
| 20 | 5,625.00 | 4,567.24 | 456.72 | 5,168.28 |
| 25 | 7,031.25 | 6,152.53 | 615.25 | 6,416.00 |
| 30 | 8,437.50 | 8,081.29 | 808.13 | 7,629.37 |

[1] Assuming contributions start Mar. 1, 1956. These figures are approximate in that the actual method of computing interest may produce slightly different results.
[2] This includes service as judge, Congressman, legislative employee (15 years) or member of Armed Forces (5 years). A minimum of 5 years of civilian service is required.

In each case the maximum pension is 37½ percent of the average base salary minus any deduction for unpaid deposits. At the rate of 1¼ percent per year, this maximum is reached after 30 years of service.

Benefits are also provided for dependent children, in the same amounts as under the civil-service retirement system with a maximum annuity of $360 per year for each surviving child if the judge leaves a widow or a maximum of $480 per child, if the surviving dependent children are orphans. As pointed out by Mr. Myers, the cost of these children's benefits will be relatively negligible. Because the number of surviving dependent children under 18 will not be large, the total amount of their annuities will be small and since these children will generally be close to the age of 18 (the average age of the judges at appointment is 50) the average duration of annuity payments will be short.

Some concrete examples are given in the appendix of pensions of judges having only judicial service and having both judicial service and service in the executive branch, which takes a lower rate, as in the case of Congressmen.

## THE COST

The overall cost of the pensions is shown in the following table prepared by Mr. Myers:

*Estimated number of widows of judges and benefits for such widows in future years* [1]

| Calendar year | Number of widows | | | Widow's benefits | Contributions by judges [2] | Net cost to Government |
|---|---|---|---|---|---|---|
| | Widowed before 1957 | Widowed after 1956 | Total | | | |
| 1956 | 113 | ---------- | 113 | $282,000 | $120,000 | $162,000 |
| 1961 | 86 | 38 | 124 | 406,000 | 120,000 | 286,000 |
| 1966 | 58 | 78 | 136 | 566,000 | 120,000 | 446,000 |
| 1971 | 36 | 110 | 146 | 728,000 | 120,000 | 608,000 |
| 1976 | 20 | 132 | 152 | 814,000 | 120,000 | 694,000 |
| 1981 | 10 | 142 | 152 | 847,000 | 120,000 | 727,000 |
| 1986 | 5 | 145 | 150 | 854,000 | 120,000 | 734,000 |
| 1991 | 2 | 149 | 151 | 867,000 | 120,000 | 747,000 |
| 1996 | 1 | 152 | 153 | 880,000 | 120,000 | 760,000 |
| 2001 | ---------- | 154 | 154 | 890,000 | 120,000 | 770,000 |

[1] On the basis of the present number of judges.
[2] On the basis of 89 percent participation by judges.

Contributions would amount to about $135,000 a year if all judges participated. Since all judges will not participate this amount has been reduced in the table to $120,000, which is 89 percent of the possible total contributions.

It thus appears that the initial cost will be approximately $162,000 per year. This will increase in 10 years to $446,000 per year and in another 10 years to $694,000 per year, from which point it will rise more gradually to $770,000 per year in 45 years, at which point it will level off. This is just over 2 percent of the present budget for the judiciary.

Table 1 attached shows the total salaries of judges as of December 31, 1955, and the number of judges as of that date. Table 2 gives some general information as to the present judges and present widows of judges.

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TABLE 1.—*Salaries of judges as of Dec. 31, 1955*

| | Authorized positions | | Filled | | Vacant | |
|---|---|---|---|---|---|---|
| | Number | Total salaries | Number | Total salaries | Number | Total salaries |
| Circuit | 68 | $1,734,000 | 64 | $1,632,000 | 4 | $102,000 |
| District | 250 | 5,616,125 | 246 | 5,526,125 | 4 | 90,000 |
| Court of Customs and Patent Appeals | 5 | 127,500 | 4 | 102,000 | 1 | 25,500 |
| Customs Court | 9 | 202,500 | 9 | 202,500 | | |
| Court of Claims | 5 | 127,500 | 5 | 127,500 | | |
| Total | 337 | 7,807,625 | 328 | 7,590,125 | 9 | 217,500 |
| Retired: | | | | | | |
| Circuit | | | 12 | 306,000 | | |
| District | | | 31 | 673,125 | | |
| Court of Customs and Patent Appeals | | | 1 | 25,500 | | |
| Customs Court | | | 2 | 45,000 | | |
| Resigned: | | | | | | |
| District | | | 4 | 59,568 | | |
| Court of Customs and Patent Appeals | | | 1 | 25,500 | | |
| Total | | | 51 | 1,134,693 | | |
| Grand total | | | 379 | 8,724,818 | | |

TABLE 2.—*Information concerning judges and judges' widows*

(Average ages: 364 judges (75 circuit; 267 district; 6 Customs and Patent Appeals; 5 Court of Claims; and 11 Customs Court). This includes retired judges and retired time is included in service [1])

| | *Years* |
|---|---|
| Average age of judge at appointment | 50 |
| Average total length of service of present judges as of Dec. 31, 1955 | 12 |
| Average present age (Dec. 31, 1955) | 63 |
| Average length of allowable judicial service not exceeding 30 years maximum of 110 judges who died between Dec. 31, 1945, and Dec. 31, 1955 | 18.5 |
| Average age at death of 110 judges referred to on previous line | 74 |
| Average age of wives of present judges [2] | 57 |
| Average difference in ages of judges and wives | 5.50 |
| Marital status: of 297 judges reporting, 270, or 91 percent, are married; 27, or 9 percent, are not married.[2] | |
| Dependent children under 18: 140, or 0.47 per judge.[2] | |
| Number of judges' widows: approximately 125. | |
| Average age of widows | 71 |
| Number of widows whose husbands are known to have had 5 years of judicial service: 111. Average age | 71 |

[1] Information does not include Territorial judges.
[2] Based on judges' response to Mar. 11, 1955, survey.

## APPENDIX—EXAMPLES OF PENSIONS OF WIDOWS OF DISTRICT AND CIRCUIT JUDGES UNDER CERTAIN CONDITIONS

Under the provisions of the proposed bill the widow of a district judge dying on March 1, 1956, the anniversary date of the recent salary increase, after 15 years of judicial service would receive a pension of $2,713. If prior to his death the judge had made retroactive payments into the fund in the amount of $3,808 including interest, the widow's pension would be increased by $380 per annum.

The widow of a circuit judge dying on the same date with 15 years of service as a judge would receive a pension of $3,129 and if the fund had been reimbursed by the judge prior to his death in the amount of $4,524 representing the deductions from salary and interest thereon

for prior service, the pension for the widow would be increased by about $452 per year.

The bill provides that the pension shall be computed on the basis of the average annual salary of the judge during his last 5 years of service and at the present rate of compensation the highest possible salary base will be reached in 1960. The widow of a district judge dying at that time after 15 years of allowable service would receive a pension of $3,892 and the widow of a circuit judge in a smiliar situation would receive $4,400. To effectuate this each judge must bring himself under the provisions of the proposed bill and agree to salary deductions totaling $1,350 for the district judge and $1,530 for the circuit judge for the period from 1956 to 1960. By making retroactive payments, with interest, of $3,264 the district judge would increase this pension by $326 per year and the circuit judge by paying in $3,815 would be able to increase the pension of his widow by $381 per year.

If either a district judge or a circuit judge in the situations described above had had 5 years of prior service in the executive department of the Government at an average salary of $7,500 per year (the average salary of a United States attorney in a medium-size district in 1945) the pension of the widow in each instance would be increased by 20 percent, if deposits for past service were made throughout.

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT,
*Philadelphia, Pa., January 21, 1956.*

Hon. HARLEY M. KILGORE,
*Chairman, Committee on the Judiciary,*
*Washington, D. C.*

DEAR SENATOR KILGORE: Enclosed you will find copies of a proposed bill to provide annuities for widows and surviving dependent children of United States judges on a contributory basis, and also copies of an accompanying report which explains the purposes of the proposed legislation and its method of operation.

The bill is identical, both in substance and language, with a few minor exceptions, with H. R. 6974, with amendments, now pending in the House of Representatives and referred to the Judiciary Committee of the House.

The proposed legislation, with a few minor exceptions, as appears from the accompanying report, is identical with the present law providing annuities for widows and surviving dependent children of Members of Congress.

The proposal of creating annuities for the widows and the surviving dependent children of United States judges, on a contributory basis, has received the endorsement of the Judicial Conference of the United States, and I am quite sure that the provisions of the bill meet with the approval of the Federal judiciary. For the reasons set out in the report the enactment of such legislation would be of great aid to the Federal judiciary.

Judge Albert B. Maris, of this court, and myself, were designated by the Judicial Conference of the United States to bring the bill to the attention of the congressional leaders.

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We would deem it a great favor if you were to see fit to introduce this bill in the Senate to the end that it might be referred to the Judiciary Committee.

I need hardly add that the members of the staff of the Administrative Office of the United States Courts and Judge Maris and myself will be available at all times to afford you any information which you may desire respecting the proposed legislation.

Respectfully yours,

JOHN BIGGS, Jr.

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## CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

### CHAPTER 17, TITLE 28, UNITED STATES CODE

* * * * * * *

**SEC. 375. ANNUITIES TO WIDOWS OF JUSTICES.**

* * * * * * *

***"SEC. 376. ANNUITIES TO WIDOWS AND SURVIVING DEPENDENT CHILDREN OF JUDGES."***

*(a) Any judge of the United States may by written election filed with the Director of the Administrative Office of the United States Courts within six months after the date on which he takes office (or within six months after the enactment of this section) bring himself within the purview of this section.*

*(b) There shall be deducted and withheld from the salary of each judge electing to bring himself within the purview of this section a sum equal to 1½ per centum of such judge's salary, including salary paid after retirement from regular active service under section 371 (b) or 372 (a) of this title or after retirement from office by resignation on salary under section 371 (a) of this title. The amounts so deducted and withheld from the salary of each such judge shall, in accordance with such procedure as may be prescribed by the Comptroller General of the United States, be deposited in the Treasury of the United States to the credit of a fund to be known as the judicial survivors annuity fund and said fund is appropriated for the payment of annuities, refunds, and allowances as provided by this section. Every judge who elects to bring himself within the purview of this section shall be deemed thereby to consent and agree to the deductions from his salary as provided in this subsection, and payment less such deductuons shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all judicial services rendered by such judge during the period covered by such payment, except the right to the benefits to which he or his survivors shall be entitled under the provisions of this section.*

*(c) Each judge who has elected to bring himself within the purview of this section shall deposit, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31st of each year, to the credit of the judicial survivors annuity fund created by this section a sum equal to 1½ per centum of his*

*salary received for service as a judge of the United States (including salary received after retirement from regular active service under section 371 (b) or 372 (a) of this title and salary received after retirement from office by resignation on salary under section 371 (a) of this title), and of his basic salary, pay or compensation for service as a Senator, Representative, Delegate or Resident Commissioner in Congress and for any other civilian service within the purview of section 707 of title 5. Such interest shall not be required for any period during which the judge was separated from all such service and was not receiving salary under section 371 (a) or 373 of this title. Each judge may elect to make such deposits in installments during the continuance of his judicial service in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts. Notwithstanding the failure of a judge to make such deposit, credit shall be allowed for the service rendered, but the annuity of the widow of such judge shall be reduced by an amount equal to 10 per centum of the amount of such deposit, computed as of the date of the death of such judge, unless such widow shall elect to eliminate such service entirely from credit under subsection (o) of this section: Provided, that no deposit shall be required from a judge for any service rendered prior to August 1, 1920, or for any honorable service in the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States.*

*(d) The Secretary of the Treasury shall invest from time to time, in interest-bearing securities of the United States or Federal farm-loan bonds, such portions of the judicial survivors annuity fund as in his judgment may not be immediately required for the payment of annuities, refunds, and allowances as provided in this section. The income derived from such investments shall constitute a part of said fund for the purpose of paying annuities and of carrying out the provisions of subsections (f), (g), (i), and (j) of this section.*

*(e) The amount deposited by or deducted and withheld from the salary of each judge electing to bring himself within the purview of this section for credit to the judicial survivors annuity fund created by this section covering service from and after August 1, 1920, shall be credited to an individual account of such judge.*

*(f) If any judge who has elected to bring himself within the purview of this section resigns from office otherwise than on salary under section 371 (a) of this title, the amount credited to his individual account, together with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31st of each year, to the date of his relinquishment of office, shall be returned to him.*

*(g) In case any judge who has elected to bring himself within the purview of this section shall die while in office (whether in regular active service or retired from such service under section 371 (b) or 372 (a) of this title) or after retirement from office by resignation on salary under section 371 (a) of this title, after having rendered at least five years of civilian service computed as prescribed in subsection (o) of this section—*

*(1) if such judge is survived by a widow but not by a dependent child, there shall be paid to such widow an annuity beginning with the day of the death of the judge or following the widow's attainment of the age of fifty years, whichever is the later, in an amount computed as provided in subsection (n) of this section; or*

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*(2) if such judge is survived by a widow and a dependent child or children, there shall be paid to such widow an immediate annuity in an amount computed as provided in subsection (n) of this section, and there shall also be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such widow, but not to exceed $900 per year divided by the number of such children or $360 per year, whichever is lesser; or*

*(3) if such judge leaves no surviving widow or widower but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the amount of the annuity to which such widow would have been entitled under paragraph (2) of this subsection had she survived, but not to exceed $1,200 per year divided by the number of such children or $480 per year, whichever is lesser.*

*The annuity payable to a widow under this subsection shall be terminable upon her death or remarriage. The annuity payable to a child under this subsection shall be terminable upon (A) his attaining the age of eighteen years, (B) his marriage, or (C) his death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability his annuity shall be terminable only upon death, marriage, or recovery from such disability. In case of the death of a widow of a judge leaving a dependent child or children of the judge surviving her the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection. In any case in which the annuity of a dependent child, under this subsection, is terminated, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.*

*(h) As used in this section—*

*(1) The term "widow" means a surviving wife of an individual, who either (A) shall have been married to such individual for at least two years immediately preceding his death or (B) is the mother of issue by such marriage, and who has not remarried.*

*(2) The term "dependent child" means an unmarried child, including a dependent stepchild or an adopted child, who is under the age of eighteen years or who because of physical or mental disability is incapable of self-support.*

*Questions of dependency and disability arising under this section shall be determined by the Director of the Administrative Office of the United States Courts subject to review only by the Judicial Conference of the United States the decision of which shall be final and conclusive. The Director may order or direct at any time such medical or other examinations as he shall deem necessary to determine the facts relative to the nature and degree of disability of any dependent child who is an annuitant or applicant for annuity under this section, and may suspend or deny any such annuity for failure to submit to any such examination.*

*(i) In any case in which (1) a judge who has elected to bring himself within the purview of this section shall die while in office (whether in regular active service or retired from such service under section 371 (b) or 372 (a) of this title) or after retirement from office by resignation on salary under section 371 (a) of this title, before having rendered five years of civilian service computed as prescribed in subsection (o) of this section, or after having rendered five years of such civilian service but without a*

*survivor or survivors entitled to annuity benefits provided by subsection (g) of this section, or (2) the right of all persons entitled to annuity under subsection (g) of this section based on the service of such judge shall terminate before a valid claim therefor shall have been established, the total amount credited to the individual account of such judge, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31st of each year, to the date of the death of such judge, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence, and such payment shall be a bar to recovery by any other person:*

*First, to the beneficiary or beneficiaries whom the judge may have designated by a writing received by the Administrative Office of the United States Courts prior to his death;*

*Second, if there be no such beneficiary, to the widow of such judge;*

*Third, if none of the above, to the child or children of such judge and the descendants of any deceased children by representation;*

*Fourth, if none of the above, to the parents of such judge or the survivor of them;*

*Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such judge;*

*Sixth, if none of the above, to such other next of kin of such judge as may be determined by the Director of the Administrative Office of the United States Courts to be entitled under the laws of the domicile of such judge at the time of his death.*

*Determination as to the widow or child of a judge for the purposes of this subsection shall be made by the Director of the Administrative Office of the United States Courts without regard to the definition of these terms stated in subsection (h) of this section.*

*(j) In any case in which the annuities of all persons entitled to annuity based upon the service of a judge shall terminate before the aggregate amount of annuity paid equals the total amount credited to the individual account of such judge, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31st of each year, to the date of the death of such judge, the difference shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (i) of this section.*

*(k) Any accrued annuity remaining unpaid upon the termination (other than by death) of the annuity of any person based upon the service of a judge shall be paid to such person. Any accrued annuity remaining unpaid upon the death of any person receiving annuity based upon the service of a judge shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:*

*First, to the duly appointed executor or administrator of the estate of such person;*

*Second, if there is no such executor or administrator payment may be made, after the expiration of thirty days from the date of the death of such person, to such individual or individuals as may appear in the judgment of the Director of the Administrative Office of the United States Courts to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.*

*(l) Where any payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made*

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*to the person who is constituted guardian or other fiduciary by the law of the State of residence of such claimant or is otherwise legally vested with the care of the claimant or his estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the State of residence of the claimant, the Director of the Administrative Office of the United States Courts shall determine the person who is otherwise legally vested with the care of the claimant or his estate.*

*(m) Annuities granted under the terms of this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. None of the moneys mentioned in this section shall be assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.*

*(n) The annuity of the widow of a judge who has elected to bring himself within the purview of this section shall be an amount equal to the sum of (1) 1½ per centum of the average annual salary received by such judge for judicial service and any other prior allowable service during the last five years of such service prior to his death, or retirement from office by resignation on salary under section 371 (a) of this title, multiplied by the sum of his years of judicial service, his years of prior allowable service as a Senator, Representative, Delegate or Resident Commissioner in Congress, his years of prior allowable service performed as a member of the Armed Forces of the United States, and his years, not exceeding fifteen, of prior allowable service performed as an employee described in section 698 (g) of title 5, and (2) three-fourths of 1 per centum of such average annual salary multiplied by his years of any other prior allowable service, but such annuity shall not exceed 37½ per centum of such average annual salary and shall be further reduced in accordance with subsection (c) of this section, if applicable.*

*(o) Subject to the provisions of subsection (c) of this section, the years of service of a judge which are allowable as the basis for calculating the amount of the annuity of his widow shall include his years of service as a judge of the United States (whether in regular active service or retired from such service under section 371 (b) or 372 (a) of this title), his years of service as a Senator, Representative, Delegate or Resident Commissioner in Congress, his years of active service as a member of the Armed Forces of the United States not exceeding five years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and his years of any other civilian service within the purview of section 707 of title 5.*

*(p) Nothing contained in this section shall be construed to prevent a widow eligible therefor from simultaneously receiving an annuity under this section and any annuity to which she would otherwise be entitled under any other law without regard to this section, but in computing such other annuity service used in the computation of her annuity under this section shall not be credited.*

*(q) The judges of the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands and judges of the United States, as defined in section 451 of this title, who are entitled to hold office only for a term of years shall be deemed judges of the United*

*States for the purposes of this section and shall be entitled to bring themselves within the purview of this section by filing an election as provided in subsection (a) of this section within the time therein specified. In the case of such judges the phrase "retirement from office by resignation on salary under section 371 (a) of this title" as used in subsections (b), (c), (g), (i), and (n) of this section shall mean "retirement from office by resignation on salary under section 373 of this title or by removal or failure of reappointment after not less than ten years judicial service", and the phrase "resigns from office otherwise than on salary under section 371 (a) of this title" as used in subsection (f) of this section shall mean "resigns from office otherwise than on salary under section 373 of this title or is removed or fails of reappointment after less than ten years judicial service".*

*SEC. 3. Paragraph (7) of subsection (a) of section 604 of title 28 United States Code, is amended to read as follows:*

*"(7) Regulate and pay annuities to widows and surviving dependent children of judges and necessary travel and subsistence expenses incurred by judges, court officers and employees, and officers and employees of the Administrative Office, while absent from their official stations on official business."*

*SEC. 4. The first paragraph of section 605 of title 28, United States Code, is amended to read as follows:*

*"The Director, under the supervision of the Judicial Conference of the United States, shall submit to the Bureau of the Budget annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the courts and the Administrative Office and the operation of the judicial survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. The Director shall cause periodic examinations of the judicial survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the Director to the Judicial Conference."*

*SEC. 5. Funds necessary to carry out the provisions of this Act may be appropriated out of any money in the Treasury not otherwise appropriated.*

*SEC. 6. A judge who resigned prior to the date of enactment of this Act and who on that date is receiving salary under section 371 (a) of title 28, United States Code, or who resigned, was removed or failed of reappointment prior to the date of enactment of this Act and who on that date is receiving salary under section 373 of title 28, United States Code, shall be considered a judge within the meaning of section 376 of title 28, United States Code, as added by section 2 of this Act, and as such shall be entitled within six months after the date of enactment of this Act to make the election authorized by and to receive the benefits of that section. A judge who retired from regular active service under section 260 of the Judicial Code of 1911 or the Act of August 5, 1939, c. 433, and who is living on the date of enactment of this Act shall be deemed for the purposes of this Act to have retired from regular active service under section 371 (b) or 372 (a), as the case may be, of title 28, United States Code.*

*SEC. 7. In the case of a living widow of a judge of the United States as defined in section 451 of title 28, United States Code, who died prior to the date of enactment of this Act, an annuity shall be paid as provided in section 376 of title 28, United States Code, as added by section 2 of*

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*this Act, as if such judge had died on such date and had elected to bring himself within the purview of such section 376, but had not made the deposit provided for by subsection (c) of the said section: Provided (a) that such widow has not remarried; and (b) that the amount of such annuity and the reduction therein because of such deposit not having been made shall be computed on the basis of the actual length of judicial and other allowable service of such judge. In the case of a judge of the United States as defined in section 451 of title 28, United States Code, who dies within six months after the date of enactment of this Act after having rendered at least five years of civilian service computed as prescribed in subsection (o) of section 376 of title 28, United States Code, as added by section 2 of this Act, but without having made an election as provided in such section 376 to bring himself within the purview of that section, an annuity shall be paid to his widow and surviving dependent children as provided in such section 376 as if such judge had elected on the day of his death to bring himself within the purview of such section 376 but had not made the deposit provided for by subsection (c) of the said section.*

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Calendar No. 2003

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1986

# COMPENSATION OF TRUSTEES IN BANKRUPTCY

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 5047]

The Committee on the Judiciary, to which was referred the bill (H. R. 5047) to increase the compensation of trustees in bankruptcy, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to increase the rates of compensation allowable by the court to trustees in bankruptcy.

### STATEMENT

The proposed legislation is recommended by the Administrative Office of the United States Courts.

A $5 fee for each estate and maximum percentage rates of compensation allowable by the court to trustees in bankruptcy for normal administration were established in 1903 and have not been changed.

In 1938 a provision was added that the court of its own motion could allow total compensation of $100 where the trustee, after he has paid all expenses of administration and has realized upon all available assets, would under the percentage rates receive less than $100.

Where the trustee conducts the business of the bankrupt his compensation is limited to no more than twice the amount allowable for normal administration.



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The present maximum rates of compensation allowable by the court to trustees for normal administration, in addition to the $5 fee for each estate, are as follows:

| | Percent |
|---|---|
| On the first $500 or less | 6 |
| On amounts from $500 to $1,500 | 4 |
| On amounts from $1,500 to $10,000 | 2 |
| On amounts in excess of $10,000 | 1 |

The Administrative Office of the United States Courts has advised the committee, as is set forth in full below, that these limitations have been strictly enforced and are making it increasingly difficult to secure competent and experienced trustees, especially in outlying areas away from the headquarters of referees.

The proposed legislation would establish new maximum rates of compensation allowable by the courts to trustees for normal administration as follows:

| | Percent |
|---|---|
| On the first $500 or less | 10 |
| On amounts from $500 to $1,500 | 6 |
| On amounts from $1,500 to $10,000 | 3 |
| On amounts from $10,000 to $25,000 | 2 |
| On amounts in excess of $25,000 | 1 |

The proposed legislation would also permit the court of its own motion to allow total compensation of $150 where the trustee, after he has paid all expenses of administration and has realized upon all available assets, would under the percentage rates receive less than $150.

The proposed new rates would apply only in bankruptcy cases initiated subsequent to the enactment of the proposed legislation.

The Department of Justice has advised the committee, by letter of April 20, 1955, that since the matter of the proposed legislation is not related to any of its activities the Department has no comment upon it.

The committee believes that the proposed new maximum rates of compensation are meritorious and recommends the proposed legislation favorably.

Attached and made a part of this report is a letter, dated April 26, 1955, from the Administrative Office of the United States Courts in regard to the similar Senate bill, S. 1679.

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ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS,
SUPREME COURT BUILDING,
*Washington, D. C., April 26, 1955.*

Hon. HARLEY M. KILGORE,
*United States Senate, Washington, D. C.*

DEAR SENATOR KILGORE: The bill (S. 1679) about which you inquired on April 20, 1955, to amend section 48c (1) of the Bankruptcy Act (11 U. S. C., sec. 76c (1)) would raise the maximum limit on the compensation allowable by the court to trustees by increasing the percentage rates approximately 50 percent over the rates presently authorized. It provides no increase in the rates of compensation allowable to a receiver who normally serves as a temporary officer from the time a case is filed until a permanent trustee is appointed.

The present provisions for compensating trustees are as follows:

"c. TRUSTEES.—The compensation of trustees for their services, payable after they are rendered, shall be a fee of $5 for each estate, deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and such further sum as the court may allow, as follows:

"'(1) NORMAL ADMINISTRATION.—When the trustee does not conduct the business of the bankrupt, such sum as the court may allow, but in no event to exceed 6 per centum on the first $500 or less, 4 per centum on moneys in excess of $500 and not more than $1,500, 2 per centum on moneys in excess of $1,500, and not more than $10,000, and 1 per centum on moneys in excess of $10,000, upon all moneys disbursed or turned over by them to any persons, including lienholders: *Provided, however*, That if in any case, after the trustee has paid all expenses of administration and has realized upon all available assets, the maximum compensation allowable to him hereunder does not exceed $100, the court may of its own motion allow the trustee a fee which with the commissions, if any, paid or to be paid him, shall not exceed $100.'" (Sec. 48c of the Bankruptcy Act, 11 U. S. C. 76c.)

The $5 fee and the rates of compensation for "normal administration" were established in 1903 and have not been changed. Double commissions for conducting the business were added in 1910 and the provision for the $100 fee was added in 1938. These limitations have been strictly enforced and are making it increasingly difficult to secure competent and experienced trustees, especially in outlying areas away from the headquarters of referees.

In September 1953 the matter was brought to the attention of the Committee on Bankruptcy Administration of the Judicial Conference of the United States which recommended that the Committee be authorized to study the subject of receivers' and trustees' compensation and report to the Conference. This recommendation was approved by the Conference.

Chief Judge Orie L. Phillips, chairman of the Bankruptcy Committee, appointed a subcommittee consisting of—

Chief Judge Seybourn H. Lynne, Birmingham, Ala., Chairman.
District Judge Albert V. Bryan, Alexandria, Va.
District Judge Alfred C. Coxe, New York, N. Y. (retired).

to study and report to the full Committee their findings and conclusions.

On February 5, 1954, the Subcommittee reported:

"We have considered various recommendations with respect to increasing the authorized compensation of receivers and trustees. A study of available statistics for the year 1953 indicates that in 84.2 percent of cases in which receivers were appointed the same individual was continued as trustee. In view of this situation and especially in the light of the fact that the services of receivers are generally of short duration, we are not inclined to recommend any increase in the presently authorized rate of compensation (sec. 48a of the Bankruptcy Act) for receivers. * * *

"Careful consideration of the matter of adquate compensation for trustees has persuaded us that a revision upward of permissible percentage of compensation should be made at this time.



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"Having assessed the recommendations of the National Bankruptcy Conference on this subject and the several comments of representatives of interested organizations with reference thereto, it is our conclusion that we should recommend the following permissible increases in the compensation of trustees by amendment of section 48c(1) of the act to change the percentage as follows:

| | *Percent* |
|---|---|
| On the first $500 | 10 |
| On the next $1,000 | 6 |
| On the next $8,500 | 3 |
| On the next $15,000 | 2 |
| On all above $25,000 | 1 |

together with a change in the discretionary allowance from $100 as it now appears in such subsection to the sum of $150.00."

This report was sent to the members of the Bankruptcy Committee, all of whom expressed their approval and recommended that the report be circulated among the circuit and district judges; that the judges and the judicial conferences and judicial councils of the circuits be requested to express their views upon the report; that all views expressed be communicated to the Committee on Bankruptcy Administration for its consideration; and that the Bankruptcy Committee make further report to the Conference at its next regular meeting. This was done and the committee reported to the Judicial Conference at its meeting in September 1954. The committee recommended the adoption of the following resolution by the Conference:

"*Be it resolved*, That it is the sense of the Conference that a greater use of trustees in the administration of nonasset cases should be made by the referees in bankruptcy. And be it further resolved that the following maximum rates of compensation for trustees be provided by amendment of section 48c (1) of the Bankruptcy Act to wit:

| | *Percent* |
|---|---|
| On the first $500 | 10 |
| On the next $1,000 | 6 |
| On the next $8,500 | 3 |
| On the next $15,000 | 2 |
| On all above $25,000 | 1 |

together with an increase in the discretionary allowance from $100 as now provided in such subsection to the sum of $150."

The resolution was adopted by the Conference at its September 1954 meeting and upon recommendation of the Bankruptcy Committee, was reaffirmed by the Conference in March 1955.

The bill (S. 1679) carries out specifically the action of the Conference and has the approval of the National Bankruptcy Conference, the legislative committee of the National Association of Credit Men and the legislative committee of the Brooklyn Bar Association.

The increases in maximum allowances to trustees are merited and needed to administer more effectively the Bankruptcy Act. I hope the proposed amendment may be enacted into law at the present session of Congress.

If there is any information this office can furnish in connection with the bill, we shall be pleased to have you call on us.

With kind regards, I am,

Sincerely yours,

HENRY P. CHANDLER.

## CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman, matter to be stricken is enclosed in brackets):

**SECTION 48c OF THE BANKRUPTCY ACT OF JULY 1, 1898, AS AMENDED (11 U. S. C., SEC. 76c)**

(c) TRUSTEES.

The compensation of trustees for their services, payable after they are rendered, shall be a fee of $5 for each estate, deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and such further sum as the court may allow, as follows:

[(1) NORMAL ADMINISTRATION.

When the trustee does not conduct the business of the bankrupt, such sum as the court may allow, but in no event to exceed 6 per centum on the first $500 or less, 4 per centum on moneys in excess of $500 and not more than $1,500, 2 per centum on moneys in excess of $1,500 and not more than $10,000, and 1 per centum on moneys in excess of $10,000, upon all moneys disbursed or turned over by them to any persons, including lienholders: *Provided, however,* That if in any case, after the trustee has paid all expenses of administration and has realized upon all available assets, the maximum compensation allowable to him hereunder does not exceed $100, the court may of its own motion allow the trustee a fee which with the commissions, if any, paid or to be paid him, shall not exceed $100.]

*(1) NORMAL ADMINISTRATION.*

*When the trustee does not conduct the business of the bankrupt, such sum as the court may allow, but in no event to exceed 10 per centum on the first $500 or less, 6 per centum on moneys in excess of $500 and not more than $1,500, 3 per centum on moneys in excess of $1,500 and not more than $10,000, and 2 per centum on moneys in excess of $10,000 and not in excess of $25,000, and 1 per centum on moneys in excess of $25,000, upon all moneys disbursed or turned over by them to any persons, including lienholders: Provided, That in any case after the trustee has paid all expenses of administration and has realized upon all available assets the maximum compensation allowable to him hereunder does not exceed $150, the court may of its own motion allow the trustee a fee which, with the commissions, if any, paid or to be paid to him, shall not exceed $150.*

* * * * * * *

## EFFECTIVE DATE OF NEW RATES OF COMPENSATION

Section 2 of the proposed legislation, as reported, provides that "The provision of this Act shall apply to all cases in which the petition initiating the proceeding under the Bankruptcy Act is filed subsequent to the date of the enactment of this Act."

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Calendar No. 2004

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1987

# PROVIDING RELIEF FOR CERTAIN MEMBERS OF THE ARMY AND AIR FORCE IN CONNECTION WITH PAYMENT WHILE AWAITING ORDERS

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 5652]

The Committee on the Judiciary, to which was referred the bill (H. R. 5652) to provide for the relief of certain members of the Army and Air Force, and for other purposes, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to authorize pay and allowances to commissioned officers of the Regular Army or Regular Air Force who, after August 31, 1946, and before the date of enactment of this proposed legislation, were absent from duty, by authority of the Secretary of the Army or the Secretary of the Air Force, while awaiting orders assigning them to their initial duty stations. The proposed legislation would also validate payments which have already been made in such cases, would permit disbursing officers to be relieved from responsibility for such payments, and would permit officers and former officers who have returned such payments to the Government to be reimbursed. The proposed legislation would not apply to officers appointed pursuant to the act of December 28, 1945, an act to provide for the appointment of additional commissioned officers in the Regular Army, and for other purposes (59 Stat. 663), as amended.



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STATEMENT

The proposed legislation was introduced at the request of the Department of Defense and it has been designated as a part of the Department of Defense legislative program.

The cost would be borne from appropriations available to the Army and to the Air Force for the pay and allowances of military personnel.

The proposed legislation would validate payments already made in the amount of $1,400,000 for the Department of the Army, and in the amount of $600,000 for the Department of the Air Force, and it would involve an estimated additional cost to the Government of $385,000.

The payments involved here are those made subsequent to August 31, 1946 (as a practical matter, payments made between December 31, 1947 and June 1953), to commissioned officers of the Regular Army and of the Regular Air Force for pay and allowance for the time from their appointment until their assignment to their initial-duty stations.

The problem is not expected to arise in the future as the administrative procedures of the Army and of the Air Force were changed in June 1953 so that there is no longer a waiting period between the time of appointment of an officer and the time of his assignment to his initial-duty station.

The payments which would be validated by this proposed legislation were made for the waiting period on the theory that an individual became an officer on the active list on the date of the execution of his oath of office and that he became entitled to the basic pay and allowances of his grade from that date regardless of the date of his assignment to his initial-duty station.

This was questioned by the General Accounting Office, which informed the Department of the Army on April 15, 1953, that credit would be withheld in disbursing officers' accounts for payments made for pay and allowances to newly commissioned officers for the period from their appointment until their departure for their initial-duty station.

The legal and legislative background is as follows:

On May 13, 1947, the Secretary of War transmitted to the Congress the draft of a bill to amend the Armed Forces Leave Act of 1946. The purpose of the proposed legislation, as set forth by the Secretary of War, was—

> To grant all personnel equal treatment in the matter of leave; to clarify and correct certain inequities, injustices, and defects which have arisen in the administration of the present act; and to provide for lump-sum payment for unused accrued leave in certain cases.

An identical draft was transmitted to the Congress by the Acting Secretary of the Navy on May 20, 1947.

In regard to the provisions which are here pertinent, the Secretary of War pointed out that under then existing law—

> officers may be absent on account of sickness, wounds, or waiting orders—

and that in the proposed legislation—

> The waiting-orders provision has been modified to apply only to members awaiting orders pending action on disability retirement in excess of number of days' leave authorized by

this act and to special cases, arising only in the Army, of commissioned officers being integrated from civil life into the Regular Army awaiting orders assigning them to their initial duty stations.

The proposed legislation recommended by the Secretary of the Army to amend the Armed Forces Leave Act of 1946 became Public Law 350 of the 80th Congress (61 Stat. 748), approved August 4, 1947. In its pertinent part it provided that after August 31, 1946—

> The Secretary of War may authorize persons who have accepted appointments as commissioned officers of the Regular Army pursuant to the provisions of the Act of December 28, 1945 (Public Law 281, 79th Cong.), as amended, to be absent from duty to await orders assigning them to their initial-duty stations and during such absence they shall receive the same pay and allowances they would receive if not so absent.

The provision that the law applied to persons who have accepted appointments as commissioned officers of the Regular Army pursuant to the provisions of the act of December 28, 1945, was a provision which made it applicable to everyone who then became an officer from civilian life. It appears clear that the legislative intent was so to make it applicable to everyone who became an officer from civilian life.

However, 3 days after the approval, on August 4, 1947, of Public Law 350, amending the Leave Act, the Congress approved, on August 7, 1947, the comprehensive Officer Personnel Act of 1947. The Officer Personnel Act of 1947, superseded, as of December 31, 1947, the act of December 28, 1945. After December 31, 1947, no one accepted appointments as commissioned officers of the Regular Army pursuant to the provisions of the Act of December 28, 1945, but rather accepted appointments as commissioned officers pursuant to the Officer Personnel Act of 1947. No amendment in this regard, however, was made in the language of the Armed Forces Leave Act.

For nearly 5 years, officers who came in under the Officer Personnel Act were paid from the date of their oaths of office without regard to the date of their assignments to their initial-duty station. On April 15, 1953, after some correspondence with the Army, the General Accounting Office, in a letter printed in full below, notified the Chief of Finance, Department of the Army, that credit would be withheld in the disbursing officers' accounts for payments of pay and allowances prior to the date individuals departed for their initial-duty stations.

The waiting periods averaged about 1 month for the Army, and payments averaged about $344 per individual; and the waiting periods averaged about 40 days for the Air Force, and payments averaged about $480 per individual.

After considering all the information before it, the committee believes that there was never any legislative intent to withhold payment from officers for the period, after the execution of their oaths of office, while they were awaiting orders assigning them to their initial-duty stations. The committee believes that the proposed legislation to validate these payments is meritorious and recommends it favorably.

Attached and made a part of this report is (1) a letter, dated March 30, 1955, from the Acting Secretary of the Army in regard to the proposed legislation, and (2) a letter, dated April 15, 1953, from the General Accounting Office to the Department of the Army.

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DEPARTMENT OF THE ARMY,
*Washington, D. C., March 30, 1955.*

Hon. RICHARD M. NIXON,
*President of the Senate.*

DEAR MR. PRESIDENT: There is forwarded herewith a draft of legislation to provide for the relief of certain members of the Army and Air Force, and for other purposes.

This proposal is a part of the Department of Defense legislative program for 1955, and the Bureau of the Budget has advised that there would be no objection to its submission to the Congress for consideration. The Department of the Army has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by the Congress.

PURPOSE OF THE LEGISLATION

The purpose of this proposed legislation is to (*a*) authorize the payment of pay and allowances to those commissioned officers of the Regular Army or Regular Air Force (except those appointed pursuant to the act of December 28, 1945 (59 Stat. 663)), as amended for the period after August 31, 1946, and after their acceptance as a commissioned officer of the Regular Army or Regular Air Force, during which period they were absent from duty by authority of the Secretary concerned awaiting orders assigning them to their initial-duty station, but have not received such payment; (*b*) validate payment of pay and allowances already made to those officers in (*a*) above; (*c*) to authorize those commissioned officers in (a) above, who having refunded to the United States the amount paid them as pay and allowances, to be entitled to be paid the amount involved.

Subsection 4 (b), Armed Forces Leave Act of 1946 (60 Stat. 964), as amended (37 U. S. C. 33 (b)), provides that persons who have accepted appointments as commissioned officers of the Regular Army or Regular Air Force pursuant to the provisions of the act of December 28, 1945 (59 Stat. 663), as amended, may be authorized to be absent from duty while awaiting orders assigning them to their initial-duty stations, and that during such absence they shall receive the same pay and allowances they would receive if not so absent. Officers appointed in the Regular Army or Regular Air Force pursuant to other provisions of law are not entitled to pay allowances while awaiting orders assigning them to their initial duty stations unless such periods of absence are chargeable to annual leave.

In this regard, on June 10, 1952, the Judge Advocate General of the Army expressed the view that "an individual tendered an appointment in the Regular Army * * * becomes an officer on the active list of the Regular Army on the date of execution of oath of office," and "becomes entitled to the basic pay and allowances of his grade from such date without regard to the nature or post of duty assigned him or lack of such assignment." On April 15, 1953, the Chief, Audit Agency, General Accounting Office, advised the Chief of Finance, United States Army, that that office "does not concur with the opinion of the Judge Advocate General and credit will be withheld in the disbursing officers accounts for payments of pay and allowance prior to the date the individuals departed for their initial-duty station."

Accordingly, action has been initiated by the Department of the Army and the Department of the Air Force to recover payments of this nature from the officers concerned.

The Department of Defense believes that, in view of the inequity which permits payments of pay and allowances to persons who have accepted appointments as commissioned officers of the Regular Army or Regular Air Force pursuant to the act of December 28, 1945 (59 Stat. 663), as amended, for periods they were authorized to be absent from duty awaiting orders assigning them to their initial-duty stations, but not to persons who have accepted appointments as commissioned officers of the Regular Army or Regular Air Force pursuant to other provisions of law for similar periods they were authorized to be absent from duty awaiting orders assigning them to their initial-duty stations, and in view of the obvious hardship that would be imposed if persons of the latter class were required to return moneys paid to them as pay and allowances for such periods, relief legislation designed to accomplish the purposes set forth above should be enacted by the Congress. It is estimated that approximately 4,000 Regular Army officers and 1,200 Regular Air Force officers would be affected by this proposal.

COST AND BUDGET DATA

It is estimated that the additional cost to the Government by the enactment of this proposed legislation would be approximately $385,000. Further, the enactment of this proposal will validate payments made in the amount of $1,400,000 for the Department of the Army, and $600,000 for the Department of the Air Force.

Sincerely yours,

CHARLES FINUCANE,
*Acting Secretary of the Army.*

GENERAL ACCOUNTING OFFICE,
*Washington, D. C., April 15, 1953.*

CHIEF OF FINANCE,
*Department of the Army,*
*Washington, D. C.*

DEAR SIR: Reference is made to your letter dated July 24, 1952, file FINEI 032.1/35279 General, in regard to the pay status of an officer on the active list of the Regular Army awaiting his initial-duty orders.

The opinion of the Judge Advocate General, quoted in your letter, apparently is premised on the general rule that compensation attaches to the office and accrues to the incumbent without regard to the performance of duty; however, that rule has been changed for military officers by the Armed Forces Leave Act of 1946. Section 4 (b) of that act, as amended (61 Stat. 748), provides that the Secretary concerned may authorize "members to be absent (from duty) in excess of the number of days' leave authorized by this act" but expressly provides that "they shall not be entitled to any pay or allowances during such absence"; except they be absent "on account of sickness or wounds, or when directed by the Secretary to be absent from duty to await orders pending action on disability retirement proceedings for any period in excess of the number of days' leave authorized by this act."

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When a newly appointed officer is at home or at some other place prior to proceeding to the place he is to perform his first actual military duty, it would appear that he is in fact "absent from duty" within the meaning of that act. The fact that orders have been issued authorizing a delay in reporting or stating that such delay is for the convenience of the Government appears immaterial, since the law makes no exception in that case regarding a member's right to active duty pay and allowances.

Moreover, the fact that under the orders here involved the officer may have been awaiting intervening temporary duty orders does not help his case, since in view of the special provision contained in section 4 (b) of the Armed Forces Leave Act of 1946, as amended, expressly authorizing officers appointed in the Regular Army under the act of December 28, 1945, 69 Stat. 663, as amended, to receive pay and allowances while absent from duty awaiting orders assigning them to their initial-duty stations, it must be concluded that officers appointed in the Regular Army under any other provisions of law are not entitled to payment while awaiting such orders, unless the absence is to be charged as leave. To take any other view of the statute would render the said special provision surplusage, a result not favored in the law.

Accordingly, in answer to the question in the last paragraph of your letter, you are advised that this office does not concur with the opinion of the Judge Advocate General and credit will be withheld in the disbursing officers' accounts for payments of pay and allowances prior to the date the individuals departed for their initial-duty stations.

Very truly yours,

W. A. WILLINGHAM,
*Chief, Army Audit Branch.*

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Calendar No. 2005

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1988

# INTERSTATE COMPACTS FOR MUTUAL MILITARY AID IN AN EMERGENCY

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 6623]

The Committee on the Judiciary, to which was referred the bill (H. R. 6623) to amend the act of July 1, 1952, so as to obtain the consent of Congress to interstate compacts relating to mutual military aid in an emergency, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to grant the consent and approval of Congress to interstate compacts relating to mutual aid in an emergency. The legislation concerns only the States of New York, New Jersey, Pennsylvania, Connecticut, Massachusetts, Vermont, and Delaware, and amends Public Law 435 of the 82d Congress.

### STATEMENT

The facts are contained in House Report No. 1817, on H. R. 6623, and are as follows:

On July 1, 1952, Congress granted congressional consent to the interstate compact between New York and New Jersey for mutual military aid in an emergency. Pennsylvania had already joined in the compact on December 14, 1951.

In granting congressional consent, the Congress incorporated a section 2 in Public Law 435, in which it granted consent in advance for other States to join in the compact by expressly providing:



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SEC. 2. Without further submission of the compact, the consent of Congress is given to any State having a common boundary with either the State of New York or the State of New Jersey to become a party to it in accordance with its terms.

Thereafter Connecticut, pursuant to section 2, sought to join the existing compact which the Congress had approved. However, New Jersey and Pennsylvania declined to permit Connecticut to become a party to this original agreement. It was their view that because of the geographical remoteness (for the purposes of their compact) between their States and Connecticut, an operating plan with Connecticut would not be feasible. It was felt that a plan could not be developed whereby their States could render immediate effective military aid to Connecticut in cases of emergency. In view of these objections, it became necessary for New York to enter into a separate compact with Connecticut. This compact was executed by the Governors of the two States on December 29, 1954.

Because of the above situation, it is necessary to obtain separate congressional consent to the new compact. The bill will add a subsection (b) to section 2 of Public Law 435 which will grant congressional consent to the entering into of compacts identical in terms with the original compact between the States of New York or New Jersey and any State or contiguous States sharing a common boundary with either New York or New Jersey. This eliminates the requirement of obtaining the consent of all States presently parties to the original compact when one of the States wishes to enter into an identical compact with another State sharing a common boundary.

Specifically the proposed legislation would accomplish the following purposes:

1. It would grant congressional consent to the compact entered into on December 29, 1954, between New York and Connecticut.

2. It would also authorize the following future actions, at the option of the States concerned, without going back to Congress for further consent:

(*a*) Massachusetts could join in the compact dated December 29, 1954, between New York and Connecticut;

(*b*) New York could enter into an identical compact with Massachusetts and Vermont; or with either Massachusetts or Vermont, in which the other State could join; and

(*c*) New Jersey could enter into an identical compact with Delaware and Pennsylvania, or with Delaware, in which Pennsylvania could join.

Thus the instant legislation permits identical compacts between the States referred to above, without the necessity of obtaining either prior congressional consent or the consent of all the States to the original compact. Such compacts would bind only the States entering into them and not any other States.

## NEED FOR LEGISLATION

The background and reasons which led to the enactment of Public Law 435, 82d Congress, are thoroughly covered in House Report 1945, 82d Congress. There is no necessity to repeat the reasons so thoroughly and cogently set forth in the 1952 report of this committee.

It is sufficient here to state that the need for the compacts, as shown in the 1952 report, is just as valid today as it was in 1952.

The purposes of the compacts are:

(1) To provide mutual military aid in case of emergency;

(2) To make provisions for protection of rights of State military forces while serving outside their own State; and

(3) To allow fresh pursuit of enemies, saboteurs, etc., across State lines.

The term "emergency" as used in the compact means and includes "invasion or other hostile action, disaster, insurrection, or imminent danger thereof."

As pointed out in the 1952 report, these compacts may be used in the cases of natural disasters as well as in war disasters. Connecticut has already had occasion to use the compact with New York. The occasion occurred during the floods which followed Hurricane Diane last August, which devastated parts of the State of Connecticut. Connecticut, at the time, asked New York to furnished "dukws" or amphibious trucks, with military personnel, to assist the Connecticut military authorities in the evacuation of civilians, and in performing other necessary emergency aid. The commanding general in New York sent six "dukws" together with such personnel as was necessary.

These men worked for 24 hours after their arrival in the stricken areas and performed services such as removing people from flooded areas, taking sick persons to hospitals, obtaining water and milk for children, and clearing blocked roads and bridges.

In addition to its National Guard, State military forces also include State defense forces, so-called State guard. These forces have no Federal status; they are purely State forces. As pointed out in the 1952 report of the committee many National Guard units at that time had been ordered into active Federal service for the Korean emergency and were out of the country. As a result, many States had to form State guards to replace them.

Public Law 849, 81st Congress, made provision for State guards. Public Law 364, 84th Congress, continued these provisions. However, these laws expressly provide that State guard forces may not be ordered into the Armed Forces of the United States. Since they cannot be federalized, they may not at any time cross State lines without the aid of an interstate compact. This legislation, in consenting to such compact, makes employment of State guard forces possible.

A study of the facts herein set out, together with the departmental reports attached, indicate to the committee that this legislation is meritorious. The committee, therefore, agrees with the conclusions reached by the House and recommends that the bill, H. R. 6623, be considered favorably.

Attached hereto and made a part hereof are reports submitted by the Department of Justice and the Department of the Army in connection with this legislation.

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DEPARTMENT OF JUSTICE,
*Washington, D. C., October 3, 1955.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 6623) to amend the act of July 1, 1952, so as to obtain the consent of Congress to interstate compacts relating to mutual military aid in an emergency.

By the act of July 1, 1952 (66 Stat. 315), the Congress extended the consent required under article I, section 10 of the Constitution to a compact between the States of New York and New Jersey (to which compact Pennsylvania had become a party) relating to mutual military aid and assistance in an emergency. The term "emergency," as used in the compact means "invasion or other hostile action, disaster, insurrection, or imminent danger thereof." The compact is not a civil-defense compact, but relates primarily to joint military cooperation in the event of an emergency and covers such matters as joint planning, the use by one State of the military forces of another, the protection of facilities such as bridges, tunnels, etc., and the pursuit across State lines of insurrectionists, saboteurs, enemies, etc.

Section 2 of the act of July 1, 1952, provides that—

> Without further submission of the compact, the consent of Congress is given to any State having a common boundary with either the State of New York or the State of New Jersey to become a party to it in accordance with its terms.

H. R. 6623 would redesignate the above-quoted language as subsection "(a)" of section 2, and would add the following new subsection:

> (b) Without submission thereof, the Congress consents to the entering into a compact identical in terms with the compact set forth in section 1 of this act, between the State of New York or the State of New Jersey, and any State, or contiguous States, sharing a common boundary with either New York or New Jersey.

Under section 2 of the 1952 act, any State having a common boundary with either New York or New Jersey may now become a party to the compact itself. The new subsection would, in addition, permit such State or States to enter into identical compacts with either New York or New Jersey. They would not, however, have to become parties to the compact itself and, therefore, would not have to become parties to an agreement with New York if they wished only to have an agreement with New Jersey, or vice versa.

In reporting to Subcommittee No. 3 of the House Committee on the Judiciary on companion bills to that which later became the act of July 1, 1952, the Department of Justice expressed concern over that provision of article V of the compact which authorizes "fresh pursuit of insurrectionists, saboteurs, enemies, or enemy forces or persons seeking or appearing to seek to overthrow the Government of the United States or of any one of the signatory States." At that time the Department indicated it was fearful "of the possibilities of the military forces of the States infringing upon the investigative juris-

diction of the Federal Bureau of Investigation and interfering with the operations of the Bureau in the protection of the internal security of the United States."

In view of the legislative history of the act of July 1, 1952, indicating the absence of any congressional intention to interfere with or impinge upon the investigative jurisdiction of the Federal Bureau of Investigation, and since the present bill would do no more than continue the terms of the existing compact on a potentially broader scale, the Department of Justice interposes no objection to its enactment.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
*Deputy Attorney General.*

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SEPTEMBER 15, 1955.

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to H. R. 6623, 84th Congress, a bill to amend the act of July 1, 1952, so as to obtain the consent of Congress to interstate compacts relating to mutual military aid in an emergency. The Secretary of Defense has delegated to the Department of the Army the responsibility for expressing the views of the Department of Defense thereon.

The Department of the Army, on behalf of the Department of Defense, has considered the above-mentioned bill which would permit the entering into of compacts between the State of New York or the State of New Jersey and any State or contiguous States sharing a common boundary with either New York or New Jersey. These compacts, to be for mutual military aid in an emergency, may be enacted with congressional consent without the submission thereof to the Congress.

The Department of Defense has no objection to the proposed legislation.

The Department of Defense is unable to make an estimate of the fiscal effects of the proposed legislation.

This report has been coordinated within the Department of Defense in accordance with the procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,
*Secretary of the Army.*

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## CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics existing law in which no change is proposed is shown in roman):

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[PUBLIC LAW 435—82D CONGRESS]

S. 968

**Granting the consent and approval of Congress to an interstate compact relating to mutual military aid in an emergency**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the consent of Congress, subject to the limitation of section 2 of this Act, is hereby given to an interstate compact, relating to mutual military aid in an emergency, negotiated and entered into by the States of New York and New Jersey, in which compact the Commonwealth of Pennsylvania joined and became a party on December 14, 1951, which compact reads as follows:

"AN INTERSTATE COMPACT FOR MUTUAL MILITARY AID IN AN EMERGENCY

"ARTICLE I

"1. The purposes of this compact are:

"a. to provide for mutual military aid and assistance in an emergency by the military forces of a signatory state to the military forces of the other signatory states or of the United States, including among other military missions, the protection of interstate bridges, tunnels, ferries, pipelines, communications facilities and other vital installations, plants, and facilities; and the military support of civil defense agencies;

"b. to provide for the fresh pursuit in case of an emergency, by the military forces or any part or member thereof of a signatory state into another state, of insurrectionists, saboteurs, enemies or enemy forces or persons seeking or appearing to seek to overthrow the government of the United States or of a signatory state;

"c. to make provision for the powers, duties, rights, privileges and immunities of the members of the military forces of a signatory state while so engaged outside of their own state.

"2. a. 'Emergency' as used in this compact shall mean and include invasion or other hostile action, disaster, insurrection or imminent danger thereof.

"b. 'State' as used in this compact shall include any signatory state.

"c. 'Military forces' as used in this compact shall include the organized militia, or any force thereof, of a signatory state.

"ARTICLE II

"This compact shall become effective as to the signatory states when the legislatures thereof have approved it and when the Congress has given its consent either before or after the date hereof. Any state not a party to this compact at the date hereof may become a party hereto.

"ARTICLE III

"The governor of each signatory state or his designated military representative shall constitute the Committee for Mutual Military Aid for the signatory states. It shall be the duty of the Committee for Mutual Military Aid to make joint plans for the employment of the military forces of the signatory states for mutual military aid and assistance in case of emergency.

"ARTICLE IV

"1. It shall be the duty of each signatory state to integrate its plan for the employment of its military forces in case of emergency with the joint plans recommended by the Committee for Mutual Military Aid and with the emergency plans of the armed forces of the United States.

"2. In case of emergency, upon the request of the Governor of a signatory state, the Governor of each signatory state, to the extent consistent with the needs of his own state, shall order its military forces or such part thereof as he, in his discretion, may find necessary, to assist the military forces of the requesting state in order to carry out the purposes set forth in this compact. In such case, it shall be the duty of the governor of each signatory state receiving such a request to issue the necessary orders for such use of the military forces of his state without the borders of his state and to direct the commander of such forces to place them under the operational control of the commander of the forces of the requesting state or of the United States which may be engaged in meeting the emergency.

"3. The governor of any signatory state, in his discretion, may recall the military forces of his state serving without its borders or any part or any member of such forces.

"ARTICLE V

"In case of an emergency, any unit or member of the military forces of a signatory state which has been ordered into active service by the Governor may upon order of the officer in immediate command thereof continue beyond the borders of his own state into another signatory state in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces or persons seeking or appearing to seek to overthrow the government of the United States or of any one of the signatory states, until they are apprehended by such unit or member. Any such person who shall be apprehended or captured in a signatory state by a unit or member of the military forces of another signatory state shall without unnecessary delay be surrendered to the military or police forces of the state in which he is taken or to the forces of the United States. Such surrender shall not constitute a waiver by the state of the military forces making the capture, of its right to extradite or prosecute such persons for any crime committed in that state.

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"ARTICLE VI

"1. Whenever the military forces or any part thereof of any signatory state are engaged outside of their own state in carrying out the purposes of this compact, the individual members of such military forces so engaged shall not be liable, civilly or criminally, for any act or acts done by them in the performance of their duty.

"2. The individual members of such forces shall have the same powers, duties, rights, privileges and immunities as the members of the military forces of the state in which they are engaged, but in any event,

"3. Each signatory state shall save harmless any member of its military forces wherever serving and any member of the military forces of any other signatory state serving within its borders for any act or acts done by them in the performance of their duty while engaged in carrying out the purposes of this compact.

"ARTICLE VII

"1. Each signatory state shall provide, in the same amounts and manner as if they were on duty within their own state, for the pay and allowances of the personnel of its military forces, and for the medical and hospital expenses, disability and death benefits, pensions and funeral expenses of wounded, injured or sick personnel and of dependents or representatives of deceased personnel of its military forces, in case such personnel shall suffer wounds, injuries, disease, disability or death while engaged without the state pursuant to this compact and while going to and returning from such other signatory state. Each signatory state shall provide in the same amounts and manner as if they were on duty within their own state for the logistical support and for other costs and expenses of its military forces while engaged without the state pursuant to this compact and while going to and returning from such other signatory state.

"2. Any signatory state rendering outside aid in case of insurrection or disaster not the result of invasion or hostile action, shall, if it so elects be reimbursed by the signatory state receiving such aid for the pay and allowances of its personnel, logistical support and all other costs and expenses referred to in Section 1 of this Article and incurred in connection with the request for aid. Such election shall be exercised by the Governor of the aiding state presenting a statement and request for reimbursement of such costs and expenses to the Governor of the requesting state.

"ARTICLE VIII

"Nothing in this compact shall be construed to limit or restrict the power of any signatory state in case of an emergency affecting that state only, to provide for the internal defense of any part of the territory of said state or for the protec-

tion and control of any bridge, tunnel, ferry, installation, plant or facility or any part thereof within the borders of such state or to prohibit the enforcement of any laws, rules and regulations or the execution of any plan with regard thereto.

"ARTICLE IX

"This compact shall continue in force and remain binding on each signatory state until the legislature or the Governor of such state gives notice of withdrawal therefrom. Such notice of withdrawal shall not be effective until six months after said notice has been given to the Governor of each of the other signatory states.

"In Witness Whereof, the States whose Governors have signed below have become parties to this compact.

"12 December 1950.

"Approved December 11, 1950.

"NATHANIEL L. GOLDSTEIN,
"Attorney General of the State of New York.
"By WENDELL P. BROWN,
"Solicitor General.

"THOMAS E. DEWEY,
"Governor of New York.

"Attest:

"THOMAS J. CURRAN,
"Secretary of State of the State of New York.

"ALFRED E. DRISCOLL,
"Governor of New Jersey.

"Approved December 11, 1950.

"W. J. DOUGHERTY, for the State Comptroller.

"Approved December 12, 1950.

"THEODORE D. PARSONS,
"Attorney General of the State of New Jersey.
"By LEON S. MILMED,
"Deputy Attorney General and Counsel to the Governor.

"Approved December 12, 1950.

"J. LINDSAY DE VALLIERE,
"Director, Division of Budget and Accounting and State Comptroller of the State of New Jersey.

"By the Governor:

"LLOYD B. MARSH,
"Secretary of State of the State of New Jersey."

SEC. 2 (*a*). Without further submission of the compact, the consent of Congress is given to any State having a common boundary with either the State of New York or the State of New Jersey to become a party to it in accordance with its terms.

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*(b) Without submission thereof, the Congress consents to the entering into a compact identical in terms with the compact set forth in section 1 of this Act, between the State of New York or the State of New Jersey, and any State, or contiguous States, sharing a common boundary with either New York or New Jersey.*

SEC. 3. The right to alter, amend, or repeal this Act is expressly reserved.

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Calendar No. 2007

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1990

# AMENDING TITLE 18 OF THE UNITED STATES CODE, SO AS TO PROVIDE FOR THE PUNISHMENT OF PERSONS WHO ASSIST IN THE ATTEMPTED ESCAPE OF PERSONS IN FEDERAL CUSTODY

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 9257]

The Committee on the Judiciary, to which was referred the bill (H. R. 9257) to amend title 18 of the United States Code, so as to provide for the punishment of persons who assist in the attempted escape of persons in Federal custody, having considered the same reports favorably thereon, without amendment, and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to broaden section 752 of title 18 of the United States Code to provide punishment for persons who instigate, aid, or assist in the attempted escape of persons in Federal custody.

### STATEMENT

Existing law provides for the punishment of a person who instigates, aids, or assists in the escape of a person in Federal custody. Existing law, however, does not provide for the punishment of a person who instigates, aids, or assists in the attempted escape of a person in Federal custody.

The present bill embodies a legislative proposal, submitted by the Office of the Attorney General, to extend the law to cover attempted escapes.

It is pointed out in a letter from the Deputy Attorney General, which is attached, that the bill is designed to close a loophole in the existing law, which exists because the statute does not reach those who insti-



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gate, aid, or assist in an unsuccessful attempt of a person to escape from Federal custody and the bill will eliminate this obvious deficiency in the law.

It appears to the committee that a deficiency in the law does in fact exist which this bill will eliminate, and accordingly the bill is favorably recommended.

Attached and made a part of this report is a letter, dated March 14, 1956, for the Deputy Attorney General.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
*March 14, 1956.*

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR: There is now pending with your committee a bill (H. R. 9257) to amend title 18 of the United States Code, so as to provide for the punishment of persons who assist in the attempted escape of persons in Federal custody.

This bill is designed to close a loophole in the existing law, and was recommended to the Congress by the Department of Justice in an executive communication dated February 2, 1956.

At present, section 752 of title 18, United States Code, provides for the punishment of an individual who instigates, aids, or assists in the escape of a person from Federal custody. However, the statute does not reach those who instigate, aid, or assist in an unsuccessful attempt of a person to escape from Federal custody. H. R. 9257, which passed the House of Representatives on March 5 and is now before your committee, will eliminate this obvious deficiency in the law.

Accordingly, prompt and favorable committee action would appear to be indicated.

Sincerely,

WILLIAM P. ROGERS,
*Deputy Attorney General.*

## CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

### SECTION 752, TITLE 18, UNITED STATES CODE

**SEC. 752. Instigating or assisting escape**

Whoever rescues or attempts to rescue or instigates, aids or assists the escape, *or attempt to escape*, of any person arrested upon a warrant or other process issued under any law of the United States, or committed to the custody of the Attorney General or to any institution by his direction, shall, if the custody or confinement is by virtue of an arrest

on a charge of felony, or conviction of any offense, be fined not more than $5,000 or imprisoned not more than five years, or both; or, if the custody or confinement is for extradition or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, be fined not more than $1,000 or imprisoned not more than one year, or both.

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Calendar No. 2008

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1991

# EQUAL RIGHTS FOR MEN AND WOMEN

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. J. Res. 39]

The Committee on the Judiciary, to which was referred the resolution (S. J. Res. 39) proposing an amendment to the Constitution of the United States relative to equal rights for men and women, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to submit an amendment to the State legislatures which, if adopted, would insure equal rights for men and women.

### STATEMENT

This is a well-known proposal, designed to assure equal rights for men and women. Similar legislation has been introduced in the Congress since 1923 following the adoption of the equal-suffrage amendment to the United States Constitution. The equal-suffrage amendment prohibits inequality and voting rights on account of sex. The proposed amendment would prohibit inequalities under the law on account of sex and thereby complete the movement for equality for women begun by the adoption of the equal-suffrage amendment.

Throughout the years, various congressional hearings have been conducted on the equal-rights proposals. The Standing Subcommittee on Constitutional Amendments conducted further hearings in this Congress although similar legislation has been reported by the committee on a number of occasions, including the 80th, 81st, 82d and 83d Congresses. In the 81st Congress and 83d Congress, the equal-rights amendment passed the Senate with an amendment, only to die without action by the House of Representatives.



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In addition, major political parties in recent years have several times pledged support of this amendment. A number of nationwide organizations are working for its adoption. Among these are:

National Women's Party.
National Federation of Business and Professional Women's Clubs.
American Medical Women's Association, Inc.
Association of American Women Dentists.
American Federation of Soroptimist Clubs.
American Association of Women Ministers.
Alpha Iota Sorority (graduates of business colleges).
General Federation of Women's Clubs.
National Association of Women Laywers.
The Wheel of Progress.
Ladies of the Grand Army of the Republic.

The United Nations Charter, to which the United States is a signatory, states in the preamble, as one of its objectives, the reaffirmation of faith in the equal rights of men and women. As a signatory to this charter the United States has subscribed to its principles, including those expressed in the preamble. However, as pointed out in the statement submitted by the National Federation of Business and Professional Women's Clubs, Inc., this Nation has not kept pace with other nations, notably Egypt, Burma, Greece, Japan, Western Germany, and Pakistan, all of whom have given constitutional equality to women.

The Committee on the Judiciary believes that this proposed amendment throughout the years has received thorough consideration. Consequently, in accordance with its previous recommendations on prior proposals to achieve the same objective, the committee is recommending that the legislation be favorably reported in order that the matter may be submitted to the Senate for its consideration.

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Calendar No. 2010

84TH CONGRESS, 2d Session } SENATE { REPORT No. 1993

# FUGITIVES FROM JUSTICE

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 806]

The Committee on the Judiciary, to which was referred the bill (S. 806) to amend sections 3182 and 3183 of title 18 of the United States Code so as to authorize the use of an information filed by a public prosecuting officer for making demands for fugitives from justice, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to amend sections 3182 and 3183 of title 18, United States Code, so as to provide that in requesting extradition of a fugitive the executive authority of the demanding jurisdiction may use as a basis therefor an information, filed by a public prosecuting officer, as well as an indictment or affidavit as now specified in those statutes.

### STATEMENT

Identical bills have passed the Senate in the past two Congresses. The Federal statutes relating to extradition now provide that the executive authority of the demanding jurisdiction may produce "a copy of an indictment found or an affidavit made before a magistrate" as the basis for demanding return of the fugitive. The proposed legislation, as amended, merely seeks to amend the language quoted above (as it appears in secs. 3182 and 3183 of title 18, U. S. C.) by inserting the provision for "an information filed by a public prosecuting officer" as an added basis for an extradition proceeding.



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Section 3182 of title 18 is derived basically from the act of February 12, 1793, 1 Statute 302, and in its present form is based on section 662 of title 18 as it existed prior to the recodification of19 48 (62 Stat. 822). Since the date of original enactment, at a time when all felony charges were required to be made by indictment, many States have changed their constitutions to authorize charges by information instead of by indictment. It is apparent that the Federal extradition statutes do not give cognizance to such changes in State laws.

Judicial construction of section 3182 (and former sec. 662) of title 18 has resulted in the frequent holding that an information was the equivalent of an indictment or affidavit as the basis for extradition proceedings (e. g., *Ex parte Nash* (44 F. 2d 403 (D. C. Ark. 1930)); *Stark* v. *Livermore* (3 N. J. Super. 94, 65 A. 2d 625 (1949)); *Denny* v. *Foster* (204 Ga. 872, 52 S. E. 2d 596 (1949)); *Ex parte Ryan* (75 Okla. Cr. 144, 129 P. 2d 204 (1942)); *People ex rel. Lyman* v. *Smith* (352 Ill. 496, 186 N. E. 159 (1933)); *State* v. *Murnane* (172 Minn. 401, 215 N. W. 863 (1927)); *Morrison* v. *Dwyer* (143 Iowa 502, 121 N. W. 1064 (1909)); and *In re Hooper* (52 Wis. 699, 58 N. W. 741 (1881)).

However, it was also widely held that an information was insufficient to constitute a basis for an extradition proceeding, in accordance with the view that the extradition statute is to be construed strictly (e. g., *Ex parte Hart* (63 Fed. 249 (C. C. A. 4th 1894)); *Henry* v. *McArthur* (223 P. 2d 621 (Colo. 1950)); *People ex rel. Lipshitz* v. *Bessenger* (273 App. Div. 19, 75 N. Y. S. 2d 392 (1947)); *Ex parte Stanley* (133 Tex. Cr. R. 192, 109 S. W. 2d 1053 (1937)); *Ex parte Hill* (34 Okla. Cr. 120, 245 Pac. 663 (1926)); and *Ex parte Holt* (92 Tex. Cr. R. 614, 244 S. W. 1016 (1922)).

Each State has an undoubted right to regulate the forms of pleading and process in its own courts, in criminal as well as in civil cases, and is not bound to conform to the forms used in other States (*Commonwealth of Ky.* v. *Dennison et al.* (24 How. 66 (U. S. 1860)) *In re Hooper, supra*). Under the existing provisions for extradition process it is possible for one State to nullify a well-based request for extradition from a sister State by holding to the letter of the Federal law, as in *State ex rel. Taylor* v. *Blair* (358 Mo. 345, 214 S. W. 2d 555 (1948)). In that case the State of Oklahoma sought to extradite from the State of Missouri a fugitive who had escaped from the Oklahoma penitentiary after serving 14 years under a sentence to 35 years' imprisonment. The Supreme Court of Missouri upheld the release of the fugitive on habeas corpus on the ground that the Governor of Oklahoma had not produced a copy of an indictment found or an affidavit made before a magistrate of that State, charging the fugitive with having committed a crime. The requisition papers did contain an authenticated copy of an information, and it was pointed out to the Missouri court that an information is a sufficient substitute for an indictment under the Oklahoma constitution, but this was to no avail since there could be shown no complete compliance with the Federal requirement.

It is the opinion of the committee that the extradition statute should be changed in that slight degree necessary to give interstate recognition to intrastate use of an information filed by a public prosecuting officer.

For the reasons stated, the committee recommends that S. 806 be considered favorably.

Attached hereto and made a part of this report is a letter addressed to the former chairman of the committee expressing the approval of the Department of Justice with respect to this legislation.

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DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
*Washington, June 3, 1952.*

Hon. PAT MCCARRAN,
*Chairman, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice relative to the bill (S. 3143) to amend section 3182 of title 18 of the United States Code so as to authorize the use of an information filed by a public prosecuting officer for making demands for fugitives from justice.

Section 3182 of title 18, United States Code, requires the production of a copy of an indictment found or an affidavit made before a magistrate of a State or Territory as an incident to extradition from a State, District, or Territory. The bill would amend section 3182 so as to require an indictment, an affidavit, or an information filed by a public prosecuting officer.

Although the term "indictment" as used in the Federal Firearms Act has been construed to include an information, the construction of the term as used in section 3182 of title 18, United States Code, has not been uniform. This bill would eliminate any ambiguity and insure the uniform application of the section.

Accordingly, the Department of Justice has no objection to the enactment of the bill.

It is recommended, however, that the bill be amended so as to accomplish a similar change in section 3183 of title 18, which section provides, in lanugage similar to that of section 3182, for extradition from countries in which the United States exercises extraterritorial jurisdiction.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

A. DEVITT VANECH,
*Deputy Attorney General.*

## CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

### UNITED STATES CODE, TITLE 18, SEC. 3182

**SEC. 3182. FUGITIVES FROM STATE OR TERRITORY TO STATE, DISTRICT OR TERRITORY**

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District, or Territory to which such person has fled, and produces a copy of an indictment found, *an information filed by a public prosecuting officer*, or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District, or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

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## UNITED STATES CODE, TITLE 18, SEC. 3183

### SEC. 3183. FUGITIVES FROM STATE, TERRITORY, OR POSSESSION INTO EXTRATERRITORIAL JURISDICTION OF THE UNITED STATES

Whenever the executive authority of any State, Territory, District, or possession of the United States or the Panama Canal Zone, demands any American citizen or national as a fugitive from justice who has fled to a country in which the United States exercises extraterritorial jurisdiction, and produces a copy of an indictment found, *an information filed by a public prosecuting officer*, or an affidavit made before a magistrate of the demanding jurisdiction, charging the fugitive so demanded with having committed treason, felony, or other offense, certified as authentic by the Governor or chief magistrate of such demanding jurisdiction, or other person authorized to act, the officer or representative of the United States vested with judicial authority to whom the demand has been made shall cause such fugitive to be arrested and secured, and notify the executive authorities making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear.

If no such agent shall appear within three months from the time of the arrest, the prisoner may be discharged.

The agent who receives the fugitive into his custody shall be empowered to transport him to the jurisdiction from which he has fled.

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Calendar No. 2012

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1995

# DESIGNATING THE DAM AND RESERVOIR TO BE CONSTRUCTED ON THE LOWER CUMBERLAND RIVER, KY., AS BARKLEY DAM AND LAKE BARKLEY

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. CHAVEZ, from the Committee on Public Works, submitted the following

## REPORT

[To accompany S. J. Res. 166]

The Committee on Public Works, to whom was referred the joint resolution (S. J. Res. 166) to designate the dam and reservoir to be constructed on the lower Cumberland River, Ky., as Barkley Dam and Lake Barkley, respectively, having considered the same, report favorably thereon without amendment and recommend that the joint resolution do pass.

The purpose of the joint resolution is to designate the lower Cumberland lock and dam on the Cumberland River, Ky., and the reservoir created thereby, as the Barkley Dam and Lake Barkley, respectively, in honor of the late Senator and former Vice President of the United States, Alben W. Barkley.

The site of the proposed lower Cumberland lock and dam is on the Cumberland River in Lyon and Livingston Counties, Ky., 30.5 miles above the confluence of the Cumberland and Ohio Rivers.

The project was authorized by Public Law 780, 83d Congress, in accordance with the recommendations contained in Senate Document No. 81, 83d Congress. The project is a multiple-purpose development for navigation, flood control, hydroelectric power, and other purposes. The reservoir will have a total capacity of 2,248,000 acre-feet, and a power installation of 130,000 kilowatts. The reservoir will extend about 120 miles upstream, a portion being in Tennessee, and have an area of approximately 100,000 acres. The estimated cost of the project is $167 million, and initiation of construction thereon is anticipated in the near future. The dam site is only a few miles from the Kentucky Dam, and the reservoir will extend almost parallel to Kentucky Lake, the largest reservoir of the Tennessee Valley Authority.



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The lower Cumberland lock and dam project is located in the district in Kentucky in which the late Senator Alben W. Barkley resided. He was always a strong advocate and supporter of this project.

The committee believes it fitting and proper that this dam and reservoir bear the name of Barkley Dam and Lake Barkley in honor of the great statesman and beloved American from Kentucky, who so ably served his State and the Nation in public office for over 50 years. The committee realizes that no engineering structure is capable of symbolizing the greatness of the man Alben W. Barkley, but we can honor his life in a modest manner by having this dam and reservoir bear his name.

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Calendar No. 2013

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1996

# FOREIGN AGENTS REGISTRATION ACT

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. WILEY, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 1273]

The Committee on the Judiciary, to which was referred the bill (S. 1273) to amend sections 1, 3, and 4 of the Foreign Agents Registration Act of 1938, as amended, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

Under section 1 of the Foreign Agents Registration Act of 1938, as amended, agents of a domestic organization which is financed or in any manner controlled by a foreign government or foreign political party, are not required to register unless it can be established that such organization is subsidized by a foreign principal.

The purpose of amendment (6), following section 1 (b) (5), is to bring such domestic organizations within the purview of the registration requirements of section 1 of the act.

Subsection (d) of section 3 of the Foreign Agents Registration Act does not clearly define the exact nature of the activity engaged in or to be engaged in by an agent of a foreign principal which will entitle him to exemption from registration under the act. The proposed amendment will clarify the subsection and aid in the making of administrative rulings with respect to registration.

Subsections (a) and (b) of section 4 of the Foreign Agents Registration Act requires the filing and labeling of political propaganda transmitted in the United States mails, or by means of interstate or foreign commerce "(i) in the form of prints or (ii) any other form intended to be circulated among two or more persons." The above quoted matter constitutes a test which is difficult to administer and

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is considered unwarranted. The purpose of the amendment is to delete the objectionable matter quoted above as a means of increasing the effectiveness and enforcement of subsections (a) and (b) of section 4 of the act.

The disclosure provisions of the Foreign Agents Registration Act, as enacted, appear to provide a loophole whereby an agent of a foreign principal physically outside the United States is able to disseminate political propaganda within the United States without being subjected to the registration, filing, and labeling provisions of the act. The purpose of the new section (e) is to give legislative sanction to what is now an administrative rule of the Attorney General of the United States which closes the said loophole, thereby subjecting such agents to make such disclosures.

In view of the certainty and the purpose of the present world Communist movement, the committee is of the opinion that this bill should be passed as soon as possible in order to enable enforcement officers to provide utmost protection to the national security.

This bill is the same as S. 3100, introduced in the 83d Congress by Senator Langer, at the request of the Attorney General, Mr. Herbert Brownell, Jr.

The Attorney General's letter with respect to this legislation is fully applicable to the bill S. 1273. The text of this letter follows:

JANUARY 26, 1954.

The VICE PRESIDENT,
*United States Senate,*
*Washington, D. C.*

DEAR MR. VICE PRESIDENT: The Department of Justice recommends the further amendment of the Foreign Agents Registration Act of 1938, as amended (58 Stat. 248), in several particulars.

First, it is suggested that section 1 (b) be amended by adding thereto a new paragraph (6), the purpose of which would be to bring within the definition of "foreign principal" certain organizations which are not now included. For example, agents of a domestic organization, which is financed, controlled, supervised or directed by a foreign government or foreign political party, are not required to register unless it can be established that such domestic organization is subsidized by a foreign principal. The proposal will bring such agents within the purview of the registration requirements of the act, irrespective of whether their organization is subsidized, if a foreign government or a foreign political party supervises, directs, controls, or finances a domestic organization to such a degree as to exercise substantial control over its policies and activities.

It is also proposed that section 3 (d) of the act should be amended to define more exactly the nature of the activity engaged in or to be engaged in by an agent of a foreign principal which will entitle him to exemption from registration under the act. Such an amendment will clarify the subsection and aid in the making of administrative rulings.

Another amendment which would improve the Foreign Agents Registration Act is addressed to the filing and labeling requirements of section 4 (a) and 4 (b), respectively. These require the filing and labeling of political propaganda transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce "(i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons." The quoted matter constitutes a test which is most difficult to administer, and is considered unwarranted. Its deletion would increase the effectiveness of the act.

Finally, it is suggested that a new subsection (e) be added to section 4 to give legislative sanction to what is presently a rule promulgated by the Attorney General. The rule, designed to plug a possible loophole in the disclosure provisions of the act, subjects an agent of a foreign principal physically outside of the United States to the registration, filing, and labeling provisions of the act in the event such agent disseminates political propaganda within the United States through the mails or any other instrumentality of interstate or foreign commerce.

This rule is now being utilized by the Post Office Department as its legal basis for declaring nonmailable propaganda mailed by an agent of a foreign principal outside the United States to persons within the United States, and as the basis upon which the Bureau of Customs is resting its authority for the seizure of propaganda material arriving in the United States by freight or express from agents of foreign principals located outside the United States and destined to persons not registered with this Department within the United States. Consequently, it is considered desirable that this rule be given legislative approval.

A draft bill which would effectuate the recommendations herein made is attached for your consideration.

The Bureau of the Budget has advised that there is no objection to the submission of this legislation.

Sincerely,

HERBERT BROWNELL, Jr.,
*Attorney General.*

The committee concurs fully with the Attorney General's views, and hopes this legislation may be enacted speedily.

## CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

### FOREIGN AGENTS REGISTRATION ACT OF 1938

(52 Stat. 631, as amended; 22 U. S. C. 611)

SECTION 1. As used in and for the purposes of this Act—

* * * * * * *

(b) The term "foreign principal" includes—

* * * * * * *

*(6) A domestic partnership, association, corporation, organization, or other combination of individuals, supervised, directed, controlled, or financed, in whole or in substantial part, by any foreign government or foreign political party;*

* * * * * * *

SEC. 3. The requirements of section 2 (a) hereof shall not apply to the following agents of foreign principals:

* * * * * * *

(d) Any person engaging or agreeing to engage only in private[,] *and* non-political[,] financial[,] *or* mercantile[, or other] activities in furtherance of the bona fide trade or commerce of such foreign principal or in the soliciting [or] *and* collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of the Act of November 4, 1939, as amended (54 Stat. 48), and such rules and regulations as may be prescribed thereunder;

(e) * * *

(f) * * *

SEC. 4. (a) Every person within the United States who is an agent of a foreign principal and required to register under the provisions of this Act who transmits or causes to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any political propaganda [(i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons] shall not later than forty-eight hours after the beginning of the transmittal thereof, send to the Librarian of Congress two copies thereof and file with the Attorney General one Copy thereof and a statement, duly signed by or on behalf of such agent, setting forth full information as to the places, times, and extent of such transmittal.

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(b) It shall be unlawful for any person within the United States who is an agent of a foreign principal and required to register under the provisions of this Act to transmit or cause to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any political propaganda [(i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons,] unless such political propaganda is conspicuously marked at its beinning with, or prefaced or accompanied by, a true and accurate statement, in the language or languages used in such political propaganda, setting forth that the person transmitting such political propaganda or causing it to be transmitted is registered under this Act with the Department of Justice, Washington, District of Columbia, as an agent of a foreign principal, together with the name and address of such agent of a foreign principal and of each of his foreign principals; that, as required by this Act his registration statement is available for inspection at and copies of such political propaganda are being filed with the Department of Justice; and that registration of agents of foreign principals required by the Act does not indicate approval by the United States Government of the contents of their political propaganda. The Attorney General, having due regard for the national security and the public interest, may by regulation prescribe the language or languages and the manner and form in which such statement shall be made and require the inclusion of such other information contained in the registration statement identifying such agent of a foreign principal and such political propaganda and its sources as may be appropriate.

(c) * * *

(d) * * *

(e) *Any person not within the United States who uses the United States mails or any means or instrumentality of interstate or foreign commerce within the United States to circulate or disseminate any political propaganda shall be regarded as acting within the United States and as subject to the provisions of this Act, except that this subsection (e) shall have no application to such person outside the United States when his use of the United States mails or a means or instrumentality of interstate or foreign commerce within the United States is confined to the transmittal of prints or other material to a person duly registered under the terms of this Act.*

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Calendar No. 2014

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1997

# NARCOTIC CONTROL ACT OF 1956

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. DANIEL, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 3760]

The Committee on the Judiciary, to which was referred the bill (S. 3760) to provide for a more effective control of narcotic drugs, and for other related purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to establish a new chapter, "Chapter 68—Narcotics," in the Federal Criminal Code outlawing the drug heroin and defining crimes and providing increased penalties for the smuggling, sale, and transportation of heroin and marihuana in the United States, including severe penalties for the sale of heroin to juveniles. It liberalizes the rules governing the issuance of search warrants in narcotics cases, authorizes interception of telephone communications between narcotics traffickers under rigid safeguards, and gives the Government the right to appeal from lower court orders suppressing the evidence in narcotic cases. Additional authority is given the Bureau of Narcotics and the Bureau of Customs, including the right to carry firearms, execute and serve search and arrest warrants, and make arrests without warrant for violations committed in their presence. Drug addicts and narcotic law violators are prohibited from crossing the borders of the United States without registering at border customs stations upon leaving the country and surrendering the registration certificate previously issued upon reentry. Title II of the proposed legislation amends and strengthens the Immigration and Nationality Act to insure the exclusion or deportation of alien narcotic offenders from the United States. It provides also for the establishment in the Bureau of Narcotics of a central record system on all narcotic addicts and violators, such information to be made available to Federal, State, and local law-enforcement agencies.



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Finally, existing laws are corrected and improved with respect to venue in cases involving marihuana.

## Background

By Senate Resolution 67, adopted March 18, 1955, the Senate authorized the Committee on the Judiciary to conduct the first nationwide investigation of the illicit narcotics traffic in the United States. The aim of the inquiry was to find ways and means of improving the Federal Criminal Code and other laws and enforcement procedures dealing with the possession, sale, and transportation of narcotics, marihuana, and similar drugs. The task was assigned by the chairman of the Committee on the Judiciary to the Subcommittee on Improvements in the Federal Criminal Code. Since its initial organization meeting on May 27, 1955, the subcommittee conducted 37 days of open hearings in Washington, Philadelphia, New York, Austin, Fort Worth, Dallas, Los Angeles, San Francisco, Chicago, Detroit, and Cleveland. Special hearings were held in San Antonio and Houston where the subcommittee heard evidence on smuggling operations along the Mexican border.

The subcommittee heard 345 witnesses, including Federal, State, and local officials and many addicts, smugglers, and other narcotic violators, for a total of 8,667 pages of testimony. In addition, evidence and innumerable practical recommendations were obtained through a series of questionnaires mailed to 52 attorneys general of the States and possessions, 94 United States attorneys, 1,120 county sheriffs, and 1,336 chiefs of police in cities and towns over 10,000 population.

S. 3760, cited as the "Narcotic Control Act of 1956," is based on the authoritative testimony heard, and on all the evidence adduced, during the subcommittee's extensive investigation. It was moreover, prepared with the active counsel and assistance of the Federal departments and agencies concerned.

Public hearings on the bill (S. 3760) itself were held Friday, May 4, at which time representatives of appropriate Federal executive agencies presented their official views and opponents of any provision of the bill were given an opportunity to file or state their objections.

## General Statement

### Extent of addiction

The United States has more narcotics addicts, both in total numbers and relative population than any other nation in the Western World. In fact, if the reports of other countries to the United Nations Commission on Narcotic Drugs are correct, our country has more drug addicts than all of the other Western Nations combined. At the end of World War II, addicts were in the ratio of 1 to 10,000 persons. Now the incidence is about 1 to every 3,000 persons, or a total of at least 60,000 drug addicts. Since January 1, 1953, the Federal Bureau of Narcotics, through voluntary reports sought from law-enforcement officials, has compiled the names and addresses of over 30,000 addicts, and new names are being reported at the rate of over 1,000 per month. Thirteen percent of the addicts are less than 21 years of age.

Drug addiction is contagious. The Nation's foremost authorities on drug addiction agree that it is comparable to a contagious disease and that each addict eventually infects at least four other persons. This view was confirmed by more than 90 percent of the addicts appearing before the subcommittee who stated they began using drugs because of friends or associates. Less than 20 percent of the known addicts are confined, and less than 15 percent of the addicts treated at Federal hospitals remain free of drugs. It is inevitable, therefore, that this contagious problem will increase from year to year unless more effective treatment procedures and facilities are devised and unless improved and strengthened enforcement measures prevent illicit narcotic drugs from being smuggled into and sold in the United States.

### CRIME AND THE ILLICIT DRUG TRAFFIC

Federal, State, and local enforcement officers testified that 50 percent or more of all crimes committed in the larger cities, and 25 percent of all reported crimes in the Nation, are attributable to narcotic addiction and the illicit drug traffic. Approximately 90 percent (actually 89.9 percent) of the illicit drug traffic is concentrated in 43 of the Nation's most populous cities, and these same cities account for 46 percent of the Nation's crime.

An average of 2,000 persons are arrested in the United States each month on narcotic charges. In addition to direct narcotic law violations, drug addicts are responsible for a large majority of the burglaries, thefts, prostitution, and other offenses committed to support their drug habits costing from $10 to $100 a day. The traffic now costs over $500 million per year, to say nothing of the human lives shortened or destroyed and the crimes of violence, such as murder, armed robbery, safecracking, and rape which result therefrom.

### SMUGGLING INTO THE UNITED STATES

(*a*) *Sources of illicit drugs*

Red China, Thailand, Turkey, Lebanon, and Mexico are the primary sources of heroin reaching the United States.

Sworn testimony before the Subcommittee on Improvements in the Federal Criminal Code and the Internal Security Subcommittee, setting forth names, dates, secret codes, methods of smuggling, and drug seizures chemically analyzed, prove beyond any doubt that Red China is producing and exporting opium and heroin as an established policy of its governing officials. This is confirmed by reports to the United Nations Commission on Narcotic Drugs.

The United States is one of the principal targets of this vicious illicit traffic in drugs as the Peiping regime seeks (1) to obtain dollars to purchase strategic materials and to pay foreign operatives and (2) to demoralize susceptible individuals in our military services and in the general population.

(*b*) *Record heroin and cocaine seizures*

In May of 1955, cocaine valued on the illicit market at $2 million was seized by narcotic agents in New York. During October and November 1955, 2 seizures of heroin were made in New York by

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agents of the Bureau of Narcotics with a street value of more than $8,500,000. The cocaine seizure was the largest ever made in the history of the United States, and the most recent seizure of heroin, November 3, 1955, was the largest single seizure of heroin ever made in the United States.

(c) *Sharp increase in seizures at ports and borders*

An ominous increase in narcotic smuggling is evident in the report filed by the Bureau of Customs on May 4, 1956, during hearings on S. 3760. The report shows that heroin seizures at ports and borders increased 165.3 percent in weight during the first 8 months of fiscal year 1956 as compared with the same period in 1955. The total number of heroin seizures increased 19.7 percent. Seizures of heroin in 1955, moreover, were the largest since 1937. An increase of 33.9 percent was also reported in the amount of smoking opium seized by customs officials during the first 8 months of fiscal year 1956. Other illicit drugs seized at ports and borders during the period, according to the report by the Bureau of Customs, increased 162.0 percent.

An increase of 13.4 percent in the number of seizures of marihuana was reported for the first 8 months of fiscal year 1956, with marihuana seizures at our ports and borders in 1955 being the largest since 1949. Cocaine seizures in fiscal year 1955 were also the largest since 1949. Seizures of morphine during the same period were the largest since 1940.

Halting of narcotic smuggling is solely a Federal responsibility. However, the committee is convinced that there is little hope of stemming the increased flow of drugs into the United States, not even to mention the objective of eliminating the illicit traffic, until the Congress enacts improved criminal laws and procedures, including heavier penalties for the smuggling and sale of narcotic drugs.

## NARCOTICS SMUGGLING ACROSS THE MEXICAN BORDER

Ninety percent of the overland smuggling of heroin and marihuana into the United States is across the Mexican border through Texas, California, and Arizona. Federal, State, and local officials reported that the majority of the illicit drug sales along the Mexican border is conducted by well-known Mexican operators in violation of Mexican laws. Their headquarters are just across the international boundary, principally at Nuevo Laredo and Juarez. Most of the actual smuggling is carried on by Mexican professionals and American drug peddlers and addicts. The enforcement officials unanimously agree that smuggling operations are not conducted by Mexican laborers and braceros, commonly referred to as wetbacks.

American drug addicts flock across the Mexican border in substantial numbers each day for injections of heroin at well-known "shooting galleries" and for smuggling operations. No law prohibits such crossings by addicts, even though they may admit their addiction to customs officers on duty. At best, customs officials can submit the known addicts to thorough searches on their return trips, but many of these addicts hide heroin in their natural body cavities and escape detection. Many of these addicts are also big-time peddlers and their smuggling is not limited to a quantity for personal use. This was emphasized in the sworn testimony of a female addict who told the subcommittee that she hid $1,000 worth of heroin in a body

cavity and smuggled it across the border at Nuevo Laredo each week for nearly a year. She and her husband were both addicts and dope peddlers in Houston, Tex.

Federal, State, and local law-enforcement officials and prosecutors have repeatedly urged the Congress to enact Federal legislation which would prevent or in some degree control the unrestricted flow of American addicts and narcotic violators back and forth across the Mexican-American border. Section 1411 of S. 3760 would accomplish this objective. At the very least, the Bureau of Customs should be authorized and directed to keep records on such known addicts and violators as is being done now at Laredo upon the initiative of local customs officers.

### PENALTIES FOR SMUGGLING AND SALE OF HEROIN

Federal penalties for the smuggling, distribution, and sale of illicit narcotics are neither commensurate with the seriousness of the crime nor are they sufficient to remove the profits. Federal penalties are generally lower than the penalties in the various States. Treating smuggling, sale, and possession of all illicit drugs alike, the following penalties are now provided:

*First offense.*—Not less than 2 years nor more than 5 years.
*Second offense.*—Not less than 5 years nor more than 10 years.
*Third offense.*—Not less than 10 years nor more than 20 years.
No probation or suspension of sentence for second and subsequent violations.

There is no separate or special penalty for the smuggling and sale of heroin, even though it is the most deadly of all narcotics, and it is the illicit drug used by 80 percent of American addicts. Heroin, purchased abroad today for $3,000 will bring $300,000 when finally cut, packaged, and sold on the illicit drug market in the United States. With the prospect of such enormous profits, and in view of the totally unrealistic penalties for smuggling and sale, it is not surprising that Federal agents report that the illicit heroin traffic is on the increase.

The committee has found, however, that whenever and wherever penalties are severe and strictly enforced, drug addiction and narcotic trafficking have decreased proportionately.

If it is the objective of the Federal Government to reduce the availability of heroin in the country to the lowest possible minimum, then smugglers, distributors, and sellers of heroin must be subjected to highly stringent laws and to the imposition of heavy, compulsory minimum sentences with an increased minimum for second and subsequent offenses. The essential purposes of making the penalties more severe for the smuggling, distribution, and sale of illicit narcotic drugs, as summed up by the New Jersey Commission on Narcotic Control, are—

(*a*) The heavy profit motive will be most effectively removed from drug trafficking;

(*b*) Will serve as strong deterrents to drug addicts who might become engaged in selling to support their habit;

(*c*) Long prison terms for convicted smugglers and peddlers are the equivalent of a severe loss of hard-to-replace manpower to the underworld organization and its merchandising system.

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In this connection, the recent report by the Canadian Senate's narcotics investigating committee, concluded:

> In advocating more severe and increased penalties for trafficking with a compulsory minimum, the committee does not do so in criticism of the length of sentences that have ordinarily been meted out to traffickers. The committee does so having regard to the elimination of street distributors, and the discouragement of addicts to engage in the trafficking or transporting of drugs. There will thus be a clear and unequivocal warning to all addicts of the consequences which they can expect if they choose for any reason to become involved in the distribution of drugs. Heavy penalties and intensified law enforcement against street drug peddlers are therefore strongly urged and in this way the committee believes that the heavy motive will most effectively be taken out of drug trafficking.

The President's Interdepartmental Committee on Narcotics, in its report tc the President on February 1, 1956, stated:

> The Committee has arrived at the conclusion that there is a need for the continuation of the policy of punishment of a severe character as a deterrent to narcotic law violations. It therefore recommends an increase of maximum sentences for first as well as subsequent offenses. With respect to the mandatory minimum features of such penalties, and prohibition of suspended sentences or probation, the committee fully recognizes objections in principle. It feels, however, that, in order to define the gravity of this class of crime and the assured penalty to follow, these features of the law must be regarded as essential elements of the desired deterrents, although some differences of opinion still exist regarding their application to first offenses of certain types.

Heroin smugglers and peddlers are selling murder, robbery, and rape, and should be dealt with accordingly. Their offense is human destruction as surely as that of the murderer. In truth and in fact, it is "murder on the installment plan," leading not only to the final loss of one life but to others who acquire this contagious infection through association with the original victim. The illicit smuggling and trafficking in heroin warrants the enactment of Federal penalties which will be sufficiently severe to make the activity a hazardous and costly undertaking. This would be accomplished by section 1402 of S. 3760.

### PENALTIES FOR SELLING HEROIN TO JUVENILES

There is no separate penalty in Federal law for the sale of narcotics to juveniles, despite the fact that 13 percent of the known drug addicts in the country are minors. Twenty-two of the States have enacted severe penalties for the offense.

It was the unanimous conclusion of the Subcommittee on Improvements in the Federal Criminal Code that extraordinarily severe sentences for the sale of heroin to minors are justified after hearing direct testimony of juvenile addiction in several of our large cities, and after testimony by Sheriff Owen W. Kilday of Bexar County, Tex., disclosed

that a drug peddler in San Antonio had systematically enticed 40 to 50 high-school students to begin using heroin.

Drug addiction is particularly tragic for our young people, for, with less than 15 percent of the victims of drug addiction being successfully cured today, it means for the great majority of them a lifetime of slavish addiction and criminality to support themselves and their drug habit.

Any Federal legislation, therefore, aimed at controlling narcotic addiction and the drug traffic in the United States should include heavy sentences for the sale of heroin to minors. This is provided for in section 1403 of S. 3760.

### OUTLAWING HEROIN IN THE UNITED STATE

Heroin, the most addicting of all narcotic drugs, should be completely outlawed in the United States as it is in most of the nations of the world. Heroin has no medical value that is not better served by legitimate drugs and, because of its dangerous addicting qualities, it is not used in the practice of medicine in the United States. It is now unlawful to import or to produce heroin in this country, but there are some small supplies of heroin legally held by hospitals and druggists. This should be surrendered at fair compensation so that the drug will be completely outlawed in our country. An absolute prohibition of heroin, except for scientific and research purposes upon the approval of the Secretary of the Treasury, would substantially strengthen presumptions in existing laws, which make the unexplained possession of heroin sufficient for conviction as a violation of Federal narcotic laws. Provisions for surrender of heroin heretofore legally possessed are included in section 1406 of S. 3760.

### PENALTIES FOR SMUGGLING MARIHUANA

The act of smuggling marihuana into the United States is punishable only under the provisions of the general smuggling statute (18 U. S. C. 545), the penalties of which are completely inadequate and unrealistic. The result has been the mushrooming of a thriving and highly profitable marihuana racket all along the Mexican-American border.

The general smuggling statute which does not specify marihuana but applies to "merchandise" generally, provides sentences ranging from 1 day to 5 years' imprisonment. No increase in penalties is provided for second and subsequent offenders. In innumerable cases, maihuana smugglers have pleaded guilty under the smuggling statute and have obtained exceedingly light sentences—a few days or months at most. The obvious result, of course, is that dealers in illicit marihuana view the penalties as mere "business risks" rather than as substantial deterrents to crime. Marihuana smuggling must be regarded as the serious offense that it is, and viewed in terms of the crime and human degradation which it inevitably causes. Law-enforcement officers along the borders have recommended that Federal legislation be enacted to remove marihuana from the provisions of the general smuggling statute and to make it a distinct offense, carrying new and severe penalties, with increased minimum sentences for second and subsequent offenses. This would be accomplished by section 1404 of S. 3760.

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A related problem has arisen concerning venue in marihuana cases. The Marihuana Tax Act, in its present form, makes it possible upon a clear showing that the actual transfer of the marihuana occurred outside of the judicial district, to deprive the United States district court of jurisdiction despite the fact that the defendant was apprehended in possession of the marihuana within its jurisdiction. Federal officials have urged Congress to enact new legislation providing that venue for violations of the Marihuana Tax Act will lie in the place where the marihuana is seized and not solely in the place where the actual transfer of the marihuana may have taken place. This would be accomplished by section 203 of title II of S. 3760.

## CRIMINAL LAWS AND PROCEDURES

### (a) *Search and seizure provisions*

Despite the fact that 9 out of 10 narcotic violations occur during the nighttime, Federal enforcement officers are denied a search warrant after nightfall unless they can swear to an affidavit, and furnish positive evidence, that illicit narcotic drugs are in the premises to be searched. This provision, in rule 41 (c) of the Federal Rules of Criminal Procedure, allows warrants to be issued on "probable cause" alone for searches and seizures of residences or establishments during the daytime, but requires the supporting affidavit to show the additional element of "positiveness" of the evidence to justify a search after dark.

Rule 41 (c) is as follows:

> (c) ISSUANCE AND CONTENTS. A warrant shall issue only on affidavit sworn to before the judge or commissioner and establishing the grounds for issuing the warrant. If the judge or commissioner is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified. The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time. It shall designate the district judge or the commissioner to whom it shall be returned.

"Positivity" has been interpreted to mean that someone who has been in the particular premises must be able to state definitely and affirmatively before the issuing authority that narcotics are in the premises.

This inflexible requirement of "positivity" seems archaic today and it certainly gives the peddler a distinct advantage over law-enforcement officers in their efforts to apprehend him. The stringent Federal rules of search and seizure hamper efforts to deal with narcotic

racketeering on both a national and interstate basis, and it is imperative that Congress recognize that Federal investigative agencies are very badly handicapped in their efforts to stamp out the illicit narcotics traffic by lack of realistic and intelligent law on the subject. The element of "positiveness" is no longer required, and "probable cause" alone is enough to obtain a night search warrant in narcotics cases in section 1410 of S. 3760.

(*b*) *Interception of telephone communications*

Although the telephone is the major means of contact between top narcotic traffickers, Federal agencies are not permitted, under any circumstances, to intercept and divulge messages between the traffickers even though it might produce evidence which would lead to their arrest and conviction. As a result, big-time traffickers are seldom caught and convicted, because they otherwise avoid all direct contact with the peddlers and ultimate buyers. Their operations are almost entirely limited to the telephone. Moreover, evidence obtained by wiretapping—even if obtained legally by State and local law-enforcement agencies—is not admissible in Federal courts.

As a consequence, the United States Government is unwittingly giving narcotics violators, especially the large racketeers and wholesalers, a great advantage over Federal law-enforcement officers in their efforts to keep pace with and stamp out the illicit narcotics traffic.

Federal and State officials have strongly urged the Congress to authorize Federal agents to intercept telephone calls between drug traffickers under appropriate judicial safeguards. Assistant Attorney General Warren Olney III, in his testimony before the subcommittee, said:

> Because of the covert nature of the narcotic traffic wherein the big supplier avoids all possible contact with the ultimate buyer and with the petty pusher or peddler, distribution is usually effected through a conspiratorial network through many intermediaries. Devious stratagems and arrangements are necessary to complete a sale and delivery. In making these arrangements the telephone is an essential tool which lends itself to clandestine operation and it is frequently necessary to employ informers or undercover agents to make telephonic contact with suppliers. In these circumstances, Federal agents have resorted to extension phones to listen in and obtain the necessary evidence.
>
> In the event the committee deems it advisable to consider legislation designed to obviate the evidentiary problem noted above, it may also wish to explore the feasibility of further amending the Communications Act so as to permit agents of the Bureau of Narcotics to intercept, under proper safeguards, telephone communications and provide that evidence so obtained shall be admissible when otherwise relevant and material in trials of individuals accused of violating the laws relating to narcotics and marihuana.

Judge J. Edward Lumbard, of the United States Court of Appeals, Second Judicial Circuit, then United States Attorney of the Southern District of New York, told the subcommittee that—

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> The narcotics traffic is run by people who operate on an international scale, and in this country on an interstate scale. They are professional criminals. They have lots of money. They have powerful allies. They have expert knowledge as to how to evade the law and to escape detection. They are not themselves addicts. In fact, they seldom handle any drugs. They have no bank accounts. They deal only in cash. Their errands are run by others. Their messengers do the transporting and the selling. In short, they operate behind a shield of henchmen.
>
> Now, to get evidence sufficient to convict a big operator, as you can see, is very difficult at best * * *. We are dealing with people who operate secretly. They have at their disposal all of the means of modern science and invention and transportation. They use the telephone extensively, and it helps to conceal their identity.
>
> Therefore, specifically, I suggest that the Federal Government should be able to tap telephone wires where there is good reason to believe that evidence would be so secured. And I suggest that a court order similar to our search-warrant procedure or indeed similar to the procedure used in the State of New York for the tapping of telephone wires would provide an adequate protection against any possible abuse of this method of securing evidence.
>
> New York State and, in fact, most of our States permit wiretapping and the use of evidence so secured, and if the State authorities can use that means, I see no reason why the Federal Government should not have the same means at its disposal.

Judge Leo A. Rover, Chief Judge of the Municipal Court of Appeals for the District of Columbia, then United States attorney, in his statement before the subcommittee, strongly endorsed the proposal to authorize interception of telephone messages in enforcing the narcotic laws. Mr. Rover stated:

> It is clear that an amendment to section 605 of the Communications Act would be of inestimable value in ferreting out those engaged in the narcotics traffic. As recently as last fall 1 of my assistants prosecuted 2 high-ranking police officers assigned to the narcotics squad for conspiracy in connection with violations of the narcotics law. Had it been possible to investigate and prepare this case without the restrictions imposed by the applicable section of the Federal Communications Act, it is entirely possible that significant additional corroborative evidence could have been made available to the jury. The great difficulty under which the prosecution labored was that it was required to present this case by witnesses who, in the main, were convicted narcotics peddlers and addicts. * * *
>
> Our conclusion with reference to the desirability of legislation which would remove the restrictions on wiretapping contained in section 605 of the Federal Communications Act, is that it would be definitely helpful to have this additional method of securing this type of evidence in these cases.

Wiretapping, therefore, is essential in the fight against the illicit drug traffic. Without it, law-enforcement agencies are severely handicapped in this age of modern electronic methods which are freely utilized by the traffickers. Unless law-enforcement agencies can match the criminals weapon for weapon, law-enforcement agencies cannot be fully effective. With careful and stringent judicial safeguards, including a sealed court order of permission, section 1407 of S. 3760 would remedy this situation by permitting interception of communications between narcotics traffickers.

(c) *Appeal by the Government*

The problems of search and seizure, as well as the lack of authority to intercept telephone communications in narcotics cases, are compounded by the fact that Federal prosecutors have been denied by some Federal appellate courts the right to appeal decisions of the lower courts suppressing the evidence allegedly obtained by unreasonable methods. It has become quite common, almost routine, for defendants in narcotic cases to object to the admissibility of evidence on grounds that it has been illegally obtained. It is obvious that if the evidence—the narcotic drug itself—is to be suppressed in narcotics cases, because of some supposed irregularity in connection with the seizure, the whole case is destroyed for the Government.

Mr. Warren Olney III, Assistant Attorney General, in his testimony before the subcommittee summed up the problem this way:

> It is our belief that whatever problem may be said to exist with regard to searches and seizures would be adequately resolved from the prosecutor's point of view by the Criminal Division's previous proposal to allow the Government the right to appeal decisions of the lower courts suppressing evidence allegedly obtained by an unreasonable search.

This would be provided for in narcotics and marihuana cases in section 1409 of S. 3760.

(d) *Additional authority for Bureau of Narcotics and Bureau of Customs*

Federal enforcement officers of both the Bureau of Narcotics and the Bureau of Customs are hampered in their investigations in that they do not possess statutory authority to carry firearms, execute and serve search and arrest warrants, serve subpenas, and in certain instances make arrests without warrants for narcotic-law violations. It is apparent that personnel of these agencies should have such authority which would give them a status similar to that now enjoyed by the Federal Bureau of Investigation, and this is included in section 1408 of S. 3760.

## CONCURRENT STATE JURISDICTION RECOGNIZED

As shown in title II, section 202 of S. 3760, this bill recognizes concurrent jurisdiction of the States in the suppression of the narcotics traffic within their respective jurisdictions and provides for cooperation with the States in drafting and enforcing their own laws. It is apparent that Congress has not in the past and does not now assert or assume exclusive jurisdiction in this field. Nothing contained in S. 3760 should be interpreted as impairing or superseding State jurisdiction and laws relating to the same offenses, it being the inten-

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tion of the Congress that the States should continue to exercise concurrent jurisdiction in the control and suppression of the narcotics traffic.

## Analysis of the Bill

### DEFINITIONS

Section 1401 defines for the first time in any Federal narcotic law the drug heroin according to its chemical properties. Such a chemical definition lends itself to a positive and accurate identification of the narcotic drug regardless of its derivation, whether extracted from the opium poppy by normal processes or manufactured synthetically.

### HEROIN—PENALTIES

Section 1402 defines and provides penalties apart from the provisions of any other narcotic law for the unlawful importation of heroin or its sale subsequent to the unlawful importation. At present all prosecutions for engaging in such activity are brought under two Federal statutes, the Narcotic Drugs Import and Export Act, and the Harrison Anti-Narcotic Act. These two basic narcotic laws control and regulate every type of narcotic drug, including the newer synthetics.

This section is designed to supersede the provisions of the Narcotic Drugs Import and Export Act only insofar as they relate to the unlawful importation of heroin or its subsequent sale, and all future prosecutions will be brought under this section with its more stringent penalties. It is not the intention of the committee, either directly or indirectly, to repeal or otherwise make inapplicable to heroin any of the relevant provisions of the Harrison Anti-Narcotic Act.

The penalties prescribed range from the minimum of 5 years for a first offense to a possible death penalty upon the specific recommendation of the jury upon conviction of a third or subsequent offense. The penalties are:

*First offense.*—Fine up to $3,000, and 5 to 10 years' imprisonment.

*Second offense.*—Fine up to $5,000, and 10 to 30 years' imprisonment.

*Third or subsequent offense.*—Fine up to $10,000, and life imprisonment, or death if recommended by jury.

A legislative presumption is included which makes the unexplained possession of heroin sufficient to authorize conviction.

### SALE OF HEROIN TO JUVENILES—PENALTIES

Section 1403 defines and provides special penalties for selling or giving of unlawfully imported heroin to any person who has not attained the age of 18 years.

While sale of heroin to a juvenile is defined in the committee bill as a capital offense, the death penalty is not mandatory punishment but must be specifically recommended by the jury. The alternative penalty is a maximum fine of $10,000 and life imprisonment or for a term of not less than 10 years. A legislative presumption is included in this section making the unexplained possession of the heroin sufficient proof of its unlawful importation.

SMUGGLING OF MARIHUANA—PENALTIES

Section 1404 defines and provides penalties, apart from the provision of any other existing statute, for the offense of smuggling marihuana into the United States. Smuggling of marihuana would henceforth be prosecuted as a violation of this section and not as a violation of any of the provisions of the general smuggling statute (18 U. S. C. 545).

Section 1404 also provides that it shall be unlawful to receive, conceal, buy, sell, or facilitate the transportation, concealment or sale of any marihuana, knowing it to have been brought into the United States contrary to law.

A legislative presumption is included which makes the unexplained possession of marihuana by the defendant sufficient evidence for conviction. Penalties provided in the section are:

*First offense.*—Fine up to $3,000 and 5 to 10 years' imprisonment.

*Second offense.*—Fine up to $5,000 and 10 to 20 years' imprisonment.

*Third or subsequent offense.*—Fine up to $10,000 and life imprisonment.

Upon conviction of second or subsequent offense, imposition or execution of the sentence shall not be suspended.

While section 1404 creates a new marihuana smuggling statute, it is not intended that it shall directly or by implication repeal or make otherwise inapplicable to marihuana any of the provisions of the Internal Revenue Code of 1954.

SECOND OR SUBSEQUENT OFFENDERS—PROCEDURE

Subsection (a) of section 1405 provides that no sentence imposed upon conviction of any offense involving the unlawful importation of heroin or its subsequent sale, including a sale to a juvenile, shall be suspended, nor shall the parole features available to Federal prisoners as provided in section 4202, title 18, United States Code, be applicable to any such conviction. In the District of Columbia, the Indeterminate Sentence Act and its accompanying parole provisions shall not apply. The purpose is to require that each and every person convicted of the above offenses shall serve the full term of any sentence lawfully imposed.

Upon conviction of a second or subsequent offense involving the smuggling of marihuana, imposition and execution of sentence shall not be suspended, nor shall any person so convicted be eligible for parole.

Subsection (b) of this section specifies the offenses which shall be considered and counted as second or subsequent offenses for the purpose of imposing the applicable penalty upon any defendant having multiple convictions of any Federal narcotic law. A procedure is outlined to be followed in proving a second or subsequent offense after conviction in all cases in which the increased penalty would be applicable.

SURRENDER OF HEROIN—PROCEDURE

Section 1406 requires the surrender of all quantities of heroin heretofore lawfully possessed by private individuals and other institutions within 120 days after the effective date of this act. Those

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persons surrendering heroin within the required statutory period are to be fairly and justly compensated. Failure to comply with the provisions of this section will result in seizure and summary forfeiture of any such heroin. All quantities of heroin surrendered pursuant to the provisions of this section, or otherwise, shall be destroyed unless distributed for approved scientific research purposes under regulations to be established by the Secretary of the Treasury.

The purpose of this section is twofold: (1) To completely outlaw heroin in the United States, and (2) to strengthen the existing legislative presumptions relating to heroin as written into the proposed legislation as well as any other applicable Federal narcotic law. These presumptions, making the unexplained possession of heroin sufficient evidence to convict, would be prime factors in any successful prosecution.

Direction is also given in this section for the disposal of all contraband marihuana seized as a result of any smuggling operation.

### TELEPHONIC INTERCEPTION—EVIDENCE

Section 1407 authorizes the use of wiretap evidence in prosecutions for violations of the Federal narcotic laws. The procedure to be followed in order to obtain authorization to intercept telephone conversations is similar to the procedure followed to procure a search warrant. To obtain such authorization, the designated law enforcement officer must initially make application to the United States attorney or his designated assistant. The application filed must be supported by an affidavit showing facts sufficient to warrant reasonable belief that the contemplated interception is necessary to obtain evidence of a violation. If approved by the United States attorney, a petition stating the grounds accompanied by the application and the affidavit is brought to the attention of a Federal judge, who, if satisfied that reasonable grounds do exist, will issue an order authorizing the interception. This order and the accompanying papers will be sealed and impounded by the clerk of the court. The order issued by the court will be good for 90 days, and can be renewed for an additional 90 days upon good cause shown. The order will specify the particular number or numbers to be intercepted, if known; the name or names of the subscribers, if known; and the address of the premises from which any intercepted telephone communication will emanate or be received. Within 5 days before the date set for trial the law-enforcement officer must file a verified report with the court, listing the number of interceptions made and the dates thereof. All orders authorizing an interception shall remain sealed until the above report is filed or unless pursuant to a direct order of the court. Any unauthorized interception and divulgence by a Federal law-enforcement officer will subject the offender to the penalties provided in existing law.

### ADDITIONAL AUTHORITY FOR THE BUREAU OF NARCOTICS AND BUREAU OF CUSTOMS

Section 1408 gives statutory authority to personnel of the Bureau of Narcotics and Bureau of Customs to carry firearms, execute arrest and search warrants, and make arrests without warrants in certain situations. The purpose is to give status to the law-enforcement

officers of these agencies comparable to that now enjoyed by agents of the Federal Bureau of Investigation.

MOTION TO SUPPRESS—APPEAL BY THE UNITED STATES

Section 1409 provides a statutory right of appeal to the United States in all cases involving a violation of the Federal narcotic laws from an order of the lower court granting a defendant's motion to suppress the evidence. Under present law questionable decisions by lower courts granting motions to suppress the evidence in narcotic cases cannot be appealed by the Government, according to the decisions of some of the Federal courts. However, the courts are not uniform in their rulings on this subject. The right of appeal would be clearly recognized and specified in this section.

To insure against unnecessary delay by the taking of frivolous appeals, this section provides that the United States attorney shall certify to the lower court that the appeal is not taken for purposes of delay and that the prosecution is unable to proceed without the evidence which has been suppressed. All such appeals shall be taken within 30 days from the date of the order granting defendant's motion to suppress.

ISSUANCE OF SEARCH WARRANTS—PROCEDURE

Section 1410 eases the restrictions which now govern the issuance of night search warrants under the provisions of rule 41 (c) of the Federal Rules of Criminal Procedure. Section 1410 provides that, in any case where violations of the narcotic laws are involved, a search warrant may be issued to be served at any time of the day or night if the judge or the commissioner issuing the warrant is satisfied that there is probable cause to believe that the grounds for the application exist. This section eliminates, therefore, the present stringent rule of "positiveness" in the affidavit which now requires evidence that the narcotic drugs sought to be taken under the warrant are in the premises to be searched.

Section 1410 also provides that a search warrant may be directed to any officer of the Metropolitan Police Department of the District of Columbia authorized to enforce or assist in enforcing a violation of Federal narcotic laws. At present, these officers are not civil officers of the United States authorized to receive and execute search warrants issued pursuant to the general laws of the United States.

BORDER CROSSINGS—NARCOTIC ADDICTS AND VIOLATORS

Section 1411 is directed at checking in some measure the unrestricted traffic across United States borders of narcotic addicts and other users of illicit drugs who have their sources of supply outside the continental limits. Narcotic addicts, other users of illicit drugs, and convicted narcotic violators would be required to register and obtain a certificate at points of departure when leaving the continental limits of the United States and surrender the certificate upon reentry. Failure to comply is punishable by a fine up to $1,000 or imprisonment from 1 to 3 years, or by both such fine and imprisonment.

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## TITLE II

Section 201 (a) amends section 212 (a) (23) of the Immigration and Nationality Act by including conspiracy to violate a narcotic law, and the illicit possession of narcotics as additional grounds for excluding any alien from this country;

(b) amends section 241 (a) (11) of the act by including conspiracy to violate any narcotic law and the illicit possession of narcotics as additional grounds to deport any alien;

(c) amends section 241 (b) of the act by including additional language to state clearly that this section does not permit judicial recommendation against deportation of an alien convicted of a narcotic offense. Such is the interpretation of the present law by Federal officials, but all doubt would be removed by this amendment.

Section 202 amends section 8 of the act entitled "An act to create in the Treasury Department the Bureau of Narcotics, and for other purposes," by authorizing the Bureau of Narcotics to conduct narcotic training programs for State and local law-enforcement personnel. It creates in the Bureau a new Division of Statistics and Records which would accept, catalog, file, and use all types of narcotic information and statistics received from Federal, State, and local law-enforcement agencies. This information would be made available for Federal, State, and local law-enforcement purposes.

Under this section all Federal agencies, notwithstanding any law to the contrary, would be required to make available to the Bureau of Narcotics the names and identifications, and any other pertinent information relating to all persons who are known to them to be narcotic addicts or convicted narcotic law violators.

Section 203 amends section 4744 (a) of the Internal Revenue Code of 1954 to eliminate a venue problem that has arisen in certain marihuana prosecutions under the statute. At present section 4744 (a) makes unlawful the transfer of marihuana without having first paid the required transfer tax, with liability under the statute falling upon the transferee. A legislative presumption is included making the unexplained possession of such marihuana, plus failure to produce the required order form indicating payment of the tax, sufficient evidence of guilt. The majority of the courts have held that the presumption is sufficient to lay the venue of the offense where the marihuana is found in the absence of substantial evidence to the contrary. However, in a number of instances the courts were deprived of jurisdiction over the offense charged under section 4744 (a) upon a clear showing that the actual transfer of the marihuana occurred outside of the judicial district in which the defendant was apprehended in possession of such marihuana. The amending language to this section attacks the problem by creating an additional offense, making it unlawful to receive, buy, sell, or in any manner facilitate the transportation, concealment, or sale of any such marihuana knowing the same to have been acquired contrary to law. As a result, venue for this new offense will lie wherever the marihuana is found.

Section 204 contains the separability clause.

## REPORTS ON S. 3760

Attached to this report, and made a part thereof, are the reports of the Department of Justice; the Immigration and Naturalization

Service, Department of Justice; Treasury Department; United States attorney for the District of Columbia; telegram from Hon. Harry J. Anslinger, Commissioner of the Bureau of Narcotics, Treasury Department; telegram from Hon. Jacob K. Javits, attorney general of the State of New York, and chairman of the committee on narcotics of the National Association of Attorneys General; and a letter from Hon. John Ben Shepperd, attorney general of the State of Texas, and president of the National Association of Attorneys General.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
*Washington, D. C., May 4, 1956.*

Hon. PRICE DANIEL,
*Chairman, Subcommittee for the Improvement of the Federal Criminal Code,*
*Committee of the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (S. 3760) to provide for a more effective control of narcotic drugs, and for other related purposes.

Title I of the bill would amend title 18, United States Code, by creating a new chapter therein providing for increased penalties for importing or trafficking in heroin and marihuana, particularly in respect to sales of heroin to juveniles, make convicted narcotic violators ineligible for parole, would authorize wiretapping in narcotic investigations under court supervision, grant additional police powers to customs and narcotic agents in the enforcement of the narcotics laws, provide for appeals by the Government from orders suppressing evidence in narcotic cases, authorize search warrants issued upon probable cause to be served at any time of the day or night, and would require narcotic addicts and persons previously convicted of narcotics violations to register and obtain a certificate before crossing the border. Title II of the bill would amend the Immigration and Nationality Act to make the illegal possession of narcotic drugs as well as conspiracy to violate any narcotic law additional grounds for excluding or deporting alien offenders from this country. It would also amend the law which established the Bureau of Narcotics in the Treasury Department to increase cooperation between Federal, State, and local authorities on matters pertaining to narcotic drug problems. Title II would also amend section 4744 (a) of the Internal Revenue Code to broaden its application in respect to marihuana.

The proposal to penalize more heavily those importing and trafficking in heroin is a matter of legislative policy. Although it is generally recognized that heroin is the most insidious of all addicting drugs, it would appear that increasing the penalties for trafficking therein may cause greater resistance to prosecution and make convictions more difficult to obtain. Then, too, the violators may simply divert their illicit efforts to purveying other forms of narcotics. Nevertheless, recognizing the present situation the Department believes the imposition of greater penalties upon heroin traffickers may be justified.

The increase in the maximum fines for heroin and marihuana offenses is likewise considered a matter of legislative policy. Since it is not believed that fines have any substantial deterrent effect, we suggest

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the courts be granted complete discretion in imposing them within the maximums provided in the bill. Under this bill, as under the present law, the court must impose some fine, however small in amount. It has been the experience of this Department under the present law that in many instances the courts either omit the imposition of fines entirely or impose them in only nominal amounts.

Turning to the drastic increase in prison terms for importers and traffickers in heroin it is noted that even for first offenders no discretion is given the courts as to suspension of execution of sentence (in this connection it is noted that no provision is made precluding suspension of imposition of sentence as provided by 18 U. S. C. 3651). It would be our suggestion that further consideration be given to vesting in the courts discretion, within the maximums provided in the bill, in sentencing first offenders, to suspend either the imposition or the execution of such sentences and grant probation. The vesting in the courts of such discretion would appear particularly appropriate in the case of marihuana violations since, in our opinion, many courts would be loath to require a first offender under those provisions to serve a 5-year jail term, and thus might be inclined to grant probation, although of the opinion that some lesser jail term would be warranted under the circumstances. The penalties for recidivists are recognized as being appropriately more severe; however, it appears that very seldom, if ever, are the big operators convicted a second or third time. We therefore have some question as to whether compulsory life imprisonment, and possibly the death penalty, would be appropriate in most instances. Nevertheless, we regard this as a matter of legislative policy.

The Department, of course, recognizes the justification as a matter of legislative policy for providing more drastic penalties for those who sell or furnish heroin to persons under 18 years of age. But we do not understand it to be the Committee's purpose to make such penalties applicable to violations of this section committed by other youths of perhaps even more tender years. Yet the language of the bill would seem to be possible of such construction.

In view of the apparent frequency with which narcotic addicts and drug peddlers cross the land borders of our country for the purpose of replenishing their supplies of narcotics, it appears that some statutory provision controlling and inhibiting border crossings by such individuals may be desirable. This, of course, is a matter of legislative policy. However, it is noted that section 1411 would apply both to narcotic addicts and certain convicted violators of the narcotic and marihuana laws. The term "addict" is not defined, and it is questioned whether a criminal prosecution of a mere addict would be sustained in the absence of any precise standard. In respect to this provision we would also question whether requiring the enumerated class of persons to register upon their return to this country would not in effect be violative of their constitutional rights in that it might compel them to incriminate themselves. Moreover, the difficulties which would be encountered in the enforcement of this provision would seem very substantial.

With respect to the proposed amendment of the statute creating in the Treasury Department the Bureau of Narcotics, which is designed to afford the Secretary greater latitude in cooperating with State authorities and the exchange of information, we believe that this is a

matter which should be commented upon by the appropriate Treasury authorities since it relates to the internal operation of one of its bureaus.

It is our understanding that in the committee report on this bill it will be made clear that the bill is not intended to repeal by implication, or to suspend the application of, the present (or past) provisions of the Internal Revenue Code in respect to narcotics and marihuana, nor to do likewise in respect to the Narcotic Drugs Import and Export Act, as amended, except insofar as section 2 (c) only of the latter act relates to heroin.

Section 1409 provides in substance, that the United States shall have the right to appeal from an order granting a motion to suppress evidence or return seized property made prior to the trial of a person charged with a violation of sections 1402, 1403 or 1404 of the bill, or with a violation of section 2 of the Narcotic Drugs Import and Export Act, or with a violation of any section of the Internal Revenue Code of 1954, the penalty for which is provided in section 7237 (a) of such code. This section further provides that the United States attorney taking an appeal from an order granting such a motion shall certify to the judge who granted the motion that the appeal is not taken for purposes of delay and that the prosecution is unable to go forward without the evidence suppressed. An appeal taken under this section must be filed within 30 days of the decision or order granting the motion to suppress and must, when filed, be diligently prosecuted.

The principal effect of this section is to work an amendment to the Criminal Appeals Act (18 U. S. C. 3731). Since, in the present state of the law, an order suppressing evidence entered after an indictment or information is filed is interlocutory in character and not appealable (e. g., *United States* v. *Janitz*, 161 F. 2d 19 (C. A. 3)), this section proposes a salutory change in the right direction. In limiting the right to appeal, however, to orders to suppress or to return evidence entered before trial only in narcotic cases and then only when the Government can certify that such evidence is indispensable to going forward with the prosecution, this section fails to achieve the desired reforms of the Criminal Appeals Act contained in H. R. 9364 and S. 3423 (84th Cong., 2d sess.).

Because H. R. 9364 and S. 3423 will apply to all criminal cases, including those covered by section 1409 of the subject bill, and will give the Government a broader right to appeal than does section 1409, they appear to be preferable to that section. These bills, with their expanded rights of appeal, would, when applied to narcotic cases, provide more effective enforcement and prosecution than would section 1409 of the subject bill.

Section 1410 of the subject bill would, in effect, amend rule 41 (c) of the Federal Rules of Criminal Procedure in two respects as it applies to any cases involving a violation of sections 1402, 1403, or 1404 of the bill, a violation of section 2 of the Narcotic Drugs Import and Export Act, or a violation of the provisions of the Internal Revenue Code of 1954, the penalty for which is provided in section 7237 (a) of such code. Rule 41 (c) provides:

"* * * The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time * * *."

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Section 1410 of the subject bill provides:

"* * * (1) a search warrant may be served at any time of the day or night if the judge or the commissioner issuing the warrant is satisfied that there is probable cause to believe that the grounds for the application exists; * * *"

It is apparent from a comparison of these two excerpts that the purpose of section 1410 is to allow the execution of a search warrant in this limited class of cases "at any time of the day or night" if the judge or commissioner is satisfied that there is probable cause to believe that the property sought is on the person or in the place to be searched. This means that any warrant issued in a narcotic case could be executed day or night, since probable cause must be found before a warrant can be issued. It abolishes the need of "positive affidavits" in these cases to justify the execution of a search warrant in the nighttime. This proposed change, applying to these crimes which often occur at night, might tend to more effective enforcement and we see no objection to the change.

The second change in rule 41 (c), Federal Rules of Criminal Procedure, worked by proposed section 1410 is minor. Whereas rule 41 (c) provides:

"* * * The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States * * *."

Section 1410 of the subject bill would add:

"* * * and (2) a search warrant may be directed to any officer of the Metropolitan Police of the District of Columbia authorized to enforce or assist in enforcing a violation of any such sections."

We see no objection to this change, which merely makes clear that "officers of the Metropolitan Police of the District of Columbia" will be deemed to be "civil officers of the United States" in the execution of warrants issued in connection with this limited class of violations.

With respect to section 201 (a) of the bill, section 212 (a) (23) of the Immigration and Nationality Act of 1952 prohibits the issuance of visas to, and the admission to the United States of, aliens who have been convicted of narcotic offenses or who are known or believed to have engaged in illicit drug traffic. However, section 212 (a) (23) makes no provision for the exclusion of aliens convicted of illicit possession of drugs, except in specified circumstances. Moreover, section 212 (a) (23) specifically covers only substantive violations of the narcotic laws and regulations; it is silent with respect to convictions of conspiracy to violate those laws and regulations. Section 201 (a) would amend section 212 (a) (23) to cure these deficiencies.

Section 201 (b) of the bill makes corresponding changes in section 241 (a) (11) of the 1952 act, providing for the deportation of alien narcotic addicts and aliens convicted of narcotic offenses. Like section 212 (a) (23), section 241 (a) (11) is silent with respect to convictions of conspiracy to violate the narcotic laws and regulations and contains similar limitations relative to convictions of illicit possession of narcotics. Section 201 (b) is almost verbatim in the language of section 11 of S. 3168, introduced on February 8, 1956, in conformity with one of the recommendations made that day by the Acting Attorney General pursuant to a special message of the President to Congress.

Section 241 (b) of the 1952 law precludes the deportation of any alien for conviction of a crime involving moral turpitude if he has,

subsequent to conviction, been granted a full and unconditional pardon by the President or a State governor or if the sentencing court makes a recommendation to the Attorney General, at the time of sentencing of within 30 days thereafter, against deportation. Contrary to this Department's contention, the section has been interpreted as possibly applying to the deportation of aliens convicted of narcotic offenses (see *United States ex rel. De Luca* v. *O'Rourke*, 213 F. 2d 759, 764 (C. A. 8); but cf. *Ex Parte Robles-Rubio*, 119 F. Supp. 610, 613 (N. D. Calif.)). Section 201 (c) of the bill, which follows practically verbatim section 12 of S. 3168, would add a sentence to section 241 (b) making it inapplicable to any alien charged with being deportable under section 241 (a) (11).

Section 201 of the bill is in accord with the program of the President and has the full support of the Department.

Respecting the proposed amendment to section 4744 (a) of the Internal Revenue Code of 1954, which broadens its application and to some extent remedies venue problems previously encountered, the Department believes this enactment will be in the interest of improved enforcement of the marihuana tax laws.

The Department has no objection to the provision in the bill respecting the surrender of heroin since its purpose is to definitely classify heroin as contraband as a matter of statutory enactment. We believe that for all practical purposes heroin has been so considered for many years.

The provisions in the bill making admissible in criminal cases any evidence obtained by a Federal law-enforcement officer or agent acting under authority of the Secretary of the Treasury as the result of the interception of telephonic communications in the course of any investigation of the specified violations of the narcotic and marihuana laws appear appropriate and desirable in the interest of narcotic law enforcement. Since authority to intercept such messages would be granted by the court only upon application of the United States attorney or his designated assistant, based on reasonable grounds, the public would be amply protected from abuse of this valuable and important investigative technique.

The provisions which would authorize certain officials and the agents of the Bureau of Narcotics and Customs to carry firearms, execute and serve search and arrest warrants at any time of the day or night, and to make arrests without warrants for narcotic or marihuana violations upon reasonable grounds, are considered desirable. Under Supreme Court rulings, Federal agents are presently limited in their authority by State law in the absence of a particular Federal statute, and it appears that this bill would do much to eliminate the uncertainty which presently attends many such matters.

In view of the urgency of submitting a report on this bill within the limited time available, the Bureau of the Budget has not been afforded an opportunity to determine whether enactment of the legislation would be in accord with the program of the President or whether there would be any objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
*Deputy Attorney General.*

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DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, D. C., May 1, 1956.*

Hon. PRICE DANIEL,
*Chairman, Subcommittee on Improvements in the*
*Federal Criminal Code, Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

DEAR SENATOR DANIEL: This is in reply to the telephone call from Mr. C. Aubrey Gasque, general counsel of your subcommittee, on April 30, 1956, requesting my individual views before May 4, 1956, on those portions of S. 3760 which have a bearing upon the law administered by this Service. I understand that the Attorney General has been requested to submit comments on behalf of the Department of Justice concerning this measure. The greater part of this bill relates to enforcement of the customs, internal revenue, and criminal laws of the United States and will undoubtedly be the subject of comment by the Department of the Treasury and the Department of Justice.

Section 201 (b) is substantially the same as section 11 of S. 3168 introduced on February 8, 1956, in conformity with one of the recommendations of the Attorney General made pursuant to the special message of the President to the Congress on that date. Section 201 (c) is identical with section 12 of S. 3168. While subsection (a) of section 201 has no precise counterpart in S. 3168 I believe it would be consistent with the views expressed by the President. In my view section 201 of S. 3760 strengthens and clarifies provisions of the Immigration and Nationality Act relating to the exclusion and deportation of violators of narcotic drug laws, and is therefore desirable as being in the best interests of the United States. One of the objectives sought to be achieved by this measure, as a whole, that is, improvement of the control of illicit traffic in drugs across our borders, meets with my firm approval.

Since, in the limited time, it has not been possible to submit this report for approval by the Bureau of the Budget, I am unable to state at this time that enactment of S. 3760 in its entirety would be in accord with the program of the President.

Sincerely,

J. M. SWING, *Commissioner.*

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TREASURY DEPARTMENT,
*Washington, May 4, 1956.*

Hon. PRICE DANIEL,
*Chairman, Subcommittee on Improvements*
*in the Federal Criminal Code,*
*Committee on the Judiciary,*
*United States Senate, Washington, D. C.*

MY DEAR MR. CHAIRMAN: This is in response to your request for a report on S. 3760, a bill to provide for a more effective control of narcotic drugs, and for related purposes.

Your subcommittee is to be highly commended for the thorough and thoughtful consideration it has given to the problems of narcotic en-

forcement and for the constructive proposals which are reflected in S. 3760. Specific comments on those proposals are set forth below.

The proposed section 1402 of title 18 of the United States Code would provide new minimum mandatory penalties, including life imprisonment, and new maximum penalties, including death, for the importation of heroin. The proposed section 1403 would provide new minimum mandatory penalties and new maximum penalties, including death, for sale of heroin to juveniles. The proposed section 1404 would provide new minimum mandatory penalties, including life imprisonment, and new maximum penalties, for smuggling marihuana into the United States. Each of these sections would make possession prima facie evidence of a violation. The proposed section 1405 would prohibit suspended sentences in the case of offenses under section 1402 or 1403 and in the case of second or subsequent offenses under section 1404. It is suggested that the phrase "with intent to defraud the United States" in the proposed section 1404 adds an unnecessary element to the crime without serving any other useful purpose, and it might therefore be deleted.

In its report to the President on February 1, 1956, the Interdepartmental Committee on Narcotics, of which the Secretary of the Treasury was a member, concluded that there was need for a continuation of the policy of punishment of a severe character as a deterrent to narcotic law violations, and it therefore recommended an increase in maximum sentences. While it recognized objections in principle to mandatory minimum penalties and prohibitions against suspended sentences, the committee felt that these features must be regarded as essential elements of the desired deterrents. Since in general the determination of specific penalty provisions involves considerations of broad public policy which the Congress can weigh more appropriately than this Department, we would not be disposed to object to whatever specific penalties are found by the Congress to be appropriate. But although we favor continuing mandatory minimum penalties for narcotic drug violations, we would be inclined to question the desirability of raising penalties at this time to the degree proposed in the bill.

The proposed section 1406 would take the final step in outlawing heroin in this country by requiring the surrender of all heroin within a specified time limit. Of course funds would have to be provided to carry out the purpose of the provision.

The proposed section 1407 would make wiretap information admissible in evidence in criminal proceedings involving Federal narcotic laws, provided certain specified procedures, including the approval of a judge of a court of the United States, are followed in making the wiretap. Such a provision would provide an effective tool in narcotic law enforcement.

The proposed section 1408 would provide specific authority for agents of the Bureau of Narcotics and the Bureau of Customs to carry firearms, execute and serve warrants and subpenas, and make arrests without warrant for violations of laws of the United States relating to narcotic drugs and marihuana. This is a desirable provision. But since coverage of the word "agent" is not entirely clear as applied to customs officers, it is suggested that the phrase "officers of the customs, Bureau of Customs, as defined in section 1401 (1), Title 19,

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19, U. S. Code," be substituted for the words "Bureau of Customs" in line 18 of page 10.

The proposed section 1409 would permit the United States to appeal from any order granting a motion to suppress evidence made prior to the trial of a person charged with a violation of the Federal narcotic laws. This provision is of primary interest to the Department of Justice.

The proposed section 1410 would change the present provision of the Federal Rules of Criminal Procedure under which search warrants must be served in the daytime unless the supporting affidavits are positive that the property is on the person or in the place to be searched. The proposed provision would authorize service of a warrant at any time in cases involving violations of the Federal narcotic laws if the judge or commissioner issuing the warrant is satisfied that there is probable cause to believe that the grounds for application exist. The proposed section would also provide that search warrants might be directed to any officer of the Metropolitan Police of the District of Columbia. These provisions would facilitate enforcement of the narcotic laws.

The proposed section 1411 would require narcotic addicts and persons who have been convicted of violation of Federal or State narcotic laws to register with a customs agent before departing from or entering the United States. Provision would be made for issuance of a certificate to any such person departing and for surrender of the certificate upon return. Registration is proposed to be performed under rules prescribed by the Secretary of the Treasury. While the Department recognizes the very desirable end that such a provision is intended to serve, this particular provision would impose enforcement responsibilities on the Department which it could not feasibly carry out. It is recommended therefore that further consideration be given to other means of achieving the objective, and that the provision be deleted from the present bill.

Section 201 of the bill would add conspiracy to violate the narcotic laws to the offenses which preclude admission of aliens or require their deportation. The addition appears to be desirable.

Section 202 would authorize the Secretary of the Treasury, in carryout the existing statutory mandate that he cooperate with the States in suppressing the use of narcotic drugs (1) to conduct narcotic training programs for State and local enforcement personnel, and (2) to maintain in the Bureau of Narcotics a Division of Statistics and Records to catalog narcotic information, including records on offenders and addicts. The general objectives of these provisions are desirable. Of course, funds would have to be provided in order for the objectives to be carried out.

Section 203 of the bill would expand the provision of law which makes it unlawful for a transferee of marihuana to acquire marihuana without paying the transfer tax. Under the law, a person found in possession of marihuana without the required order form is presumed to have acquired it without paying the tax. Experience has shown, however, that it is sometimes impossible to secure convictions under this law because the place at which the marihuana was acquired in the United States cannot be determined. The proposed amendment would close this loophole by making it unlawful also to facilitate the

transportation, concealment, or sale of any such marihuana knowing it to have been acquired contrary to law, thus providing for a prosecution at the place where the marihuana is found. The amendment is desirable. It is suggested that the phrase "knowing the same to have been acquired contrary to law" adds an unnecessary element to the crime without serving any other useful purpose, and it might therefore be deleted.

There is enclosed for your information a copy of a telegram from the Commissioner of Narcotics concerning the bill.

Because of the limited time available, we have not had an opportunity to determine whether the Bureau of the Budget has any objection to the submission of this report to your subcommittee.

Very truly yours,

DAVID W. KENDALL,
*Acting Secretary of the Treasury.*

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## REPORT OF THE UNITED STATES ATTORNEY ON S. 3760, A BILL TO PROVIDE FOR A MORE EFFECTIVE CONTROL OF NARCOTIC DRUGS, AND FOR OTHER RELATED PURPOSES

Judge Rover and I both appreciate the consideration that we have been shown at all times by this subcommittee and its staff. We have been given the opportunity of working closely with the subcommittee and its staff and of expressing our views freely in connection with the drafting of this important legislation. We feel that this proposed legislation fills an important need in a number of respects. With the committee's permission, I should like to file with the committee my analysis of the several sections of this bill. I should like the opportunity briefly to summarize my views as follows:

### PENALTIES FOR VIOLATIONS OF LAW

Stiff penalties are provided by this legislation for violations of law in which the importation of heroin into the United States, wherein the concealment, purchase, sale or transportation of heroin is involved. For a third or subsequent offense, this legislation authorizes the jury to impose the death penalty in its discretion. Drastic penalties are likely to render more difficult the obtaining of convictions. On the other hand, drastic penalties provided by this legislation may well have the salutary effect of serving as a deterrent for those who might otherwise commit offenses insofar as the importation, concealment, purchase or sale of heroin is concerned. As I have pointed out in some detail in my discussion of section 1405, I doubt very much whether any jury would impose the death penalty under the procedure set up in that section. My reason is that all section 1405 authorizes the second jury to pass on is the identity of the third offender. If the jury is convinced the accused person is the same individual who has twice previously been convicted, then they are authorized in their discretion to impose the death penalty. However, no provision is made for giving that jury an evidentiary basis for imposing so drastic a penalty as death. I doubt the wisdom of retrying the case before the second jury. My suggestion is that, if Congress still believes the

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death penalty should be imposed in certain aggravated cases, that such authority and discretion should be transferred from the second jury to the trial judge.

Section 1403. Penalty for sale of heroin to juveniles: Those who are convicted of the offense of selling or giving away heroin to juveniles warrant very special attention. When a jury is convinced that such an offender should suffer death, I personally have no objections to such a penalty. Heroin addiction is one of the most serious forms of addiction known. It has been described by Circuit Judge Edward Lumbard, former United States attorney for the southern district of New York, as slow death. Few can be reclaimed from the horrors of this habit. Such a drastic penalty as that provided in this section may well serve as a deterring influence for those who would spread the addiction to the use of such a drug among juveniles.

Section 1407 provides detailed safeguards respecting the procuring and utilization of evidence by wiretaps. I believe that these safeguards are adequate to protect the rights of individuals. I feel there is no question but that in certain rare cases it is highly desirable that the Government should have access to such evidence. Mr. Smithson's testimony before this committee at page — of part —, — day of July 1955, graphically and convincingly illustrates this point.

Section 1409 authorizes the United States to appeal the grant of a motion to suppress. I feel that this is a highly desirable provision of law. By affording appropriate appellate review, a degree of uniformity will be achieved. Many times in our experience, the grant of a motion to suppress prevents the Government from effectively going forward with a criminal prosecution. If the reviewing court determines that the trial court was in error in granting such a motion to suppress, the Government would then be in a position to try its case. Effective law enforcement would definitely be advanced by such a provision.

Section 1411 provides law-enforcement officers with what appears to be a new and effective approach in the search-and-seizure problem by authorizing the issuance of search warrants upon probable cause and providing that such warrant may be served at any time of the day or night.

Section 41 (c) of the Federal Rules of Criminal Procedure requires that before a search warrant may be served in the nighttime the affidavits must be positive that the property is on the person or the place to be searched. Positivity is not required under this proposed section. Probable cause is the sole test and no distinction is made between day or night service. This restriction has in the past, we are advised, provided substantial protection to law violators. This new approach to the search-and-seizure problem should be of inestimable value to law-enforcement officers.

In conclusion, I should like to take this opportunity to say that I feel that this proposed legislation will be of great assistance both in deterring those who are inclined to engage in the narcotics traffic and in prosecuting those who do engage in it.

Respectfully,

OLIVER GASCH,
*United States Attorney for the District of Columbia.*

TELEGRAM FROM COMMISSIONER HARRY J. ANSLINGER, FEDERAL BUREAU OF NARCOTICS

MIAMI, FLA., *May 2, 1956.*

JACK WEITZEL,
*Care Hon. David Kendall,*
*Assistant Secretary of the Treasury,*
*Treasury Office Building:*

Please deliver following to Senator Price Daniel:

"I extend profound congratulations to the Senate Judiciary Subcommittee, which under your able leadership has sponsored urgently needed legislation to suppress the abuse of narcotic drugs, after having conducted extensive and thorough hearings with sincerity of purpose to accomplish the objectives of the Senate resolution.

"The 5-year minimum penalty for unlawful sale of heroin and other provisions will unquestionably deter the mercenary trafficker who poisons his fellowman. It will bring about a sharp reduction in drug addiction and resulting crime and misery.

"Your legislation contains guiding principles for other nations which are also victims of ruthless traffickers.

"Your penetrating analysis and recommendations on the treatment and rehabilitation of narcotic addicts will be warmly received by the United Nations Narcotic Commission. It lends strong support to similar views held by that body.

"Regretting that illness will prevent me from expressing my views in person and with deep appreciation from Federal, State and city narcotic officers on the firing line, I am, with great respect to the honorable Senators on your committee,

"Sincerely yours,

"HARRY J. ANSLINGER."

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TELEGRAM FROM HON. JACOB K. JAVITS, ATTORNEY GENERAL OF NEW YORK AND CHAIRMAN, COMMITTEE ON NARCOTICS, NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

NEW YORK, N. Y., *May 3, 1956.*

Hon. PRICE DANIEL,
*Chairman, Senate Judiciary Subcommittee on Federal Code,*
*United States Senate, Washington, D. C.:*

AM pleased to note introduction of S. 3760 by you and your colleagues on for hearing Friday, which I am certain will substantially assist in vital efforts to apprehend and punish narcotic drug traffickers, especially higher-ups. In view of findings and recommendations made in the recent report of your committee, am looking forward anxiously to receiving copies of vitally necessary legislation which you recommend for acceptance by Surgeon General, of addicts committed by States under State court orders, and other constructive measures for treatment and rehabilitation. Would like to have news on treatment and rehabilitation legislation before May 18 if possible so same may be reported to National Association of Attorneys General at their meeting in Phoenix on May 21.

JACOB K. JAVITS.

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LETTER FROM HON. JOHN BEN SHEPPERD, ATTORNEY GENERAL OF TEXAS, AND PRESIDENT OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

AUSTIN 11, TEX., *May 2, 1956.*

Hon. PRICE DANIEL,
*United States Senator, Chairman, Senate Subcommittee on Improvements in the Federal Criminal Code, Senate Office Building, Washington, D. C.*

DEAR SENATOR DANIEL: Let me commend you and the members of your subcommittee for the excellent reports on your detailed hearings on narcotics sources, addicts and addiction, and responsibility for enforcement of narcotics control.

I would also like to congratulate you on the introduction of Senate bill No. 3760 which would provide a more effective control of narcotics drugs. It is noted that your bill would stiffen the penalties for illegal sale of narcotics, outlaw any sale of heroin, increase the supervision of border-control points to lessen international traffic in drugs, provide for enlarged Federal narcotics training schools and provide for the furnishing of statistical and other information between State and Federal enforcement officials. I believe that the people of Texas will strongly support each of these objectives.

As president of the National Association of Attorneys General, I polled the attorneys general of the several States and gave your committee the benefit of their views on the subject of narcotics control. You will recall that they were almost unanimous in their praise for the high level of cooperation between the Bureau of Narcotics and the State enforcement officials. Your committee has a wonderful opportunity to further that cooperative spirit by introducing legislation authorizing the furnishing of information by the Bureau to the States on individuals and cases under actual investigation by the Bureau. S. 3760 provides that the States may be requested to furnish information to the Bureau, but does not directly state that the Bureau may furnish requested information to the State enforcement officials. The chief complaint of all State enforcement officials is that States are asked to bare their files to the Federal agents, and do, but there is no reciprocal furnishing of information by Federal officials. This refusal is generally excused on the basis of law, or administrative policy, but it operates to handicap State enforcement and often leads to duplicate effort and increased and unnecessary governmental expense. You may lead the way in the narcotics-control field to correct this problem, and this example might be followed in subversive control and other criminal fields. We assume that the States maintain some police powers, even in the field of subversive control, after the Nelson case decision.

In your committee report on rehabilitation of narcotic addicts you suggested the immediate institution of State and local clinics for the aftercare treatment of former addicts released from hospital treatment. As you know, I emphasized this point in my testimony before your committee and suggested such clinics might be established on a regional basis by several cooperating States. It appears essential that the States meet this responsibility if any significant improvement is made in the rehabilitation effort.

In view of recent and rather surprising expressions of our United States Supreme Court regarding "preemption" and "supercession" of fields of criminal law by any enactment of Congress in that field, I would strongly urge the insertion of some proviso in the bill guaranteeing that the States continue to enforce their laws on narcotics control. The following paragraph might serve to that end:

"Nothing in this act shall be construed to take away or impair the jurisdiction of the courts of the several States under the narcotics-control laws thereof nor supersede narcotics-control laws, existent or enacted, in the several States, it being the intention of Congress that the several States be permitted to exercise concurrent jurisdiction in the field of narcotics control."

Please let me again commend you and the members of your fine subcommittee on your outstanding work in conducting the hearings and in the drafting or this remedial legislation.

Sincerely,

JOHN BEN SHEPPERD,
*Attorney General of Texas.*

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## CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

### TITLE 18, UNITED STATES CODE

67. Military and Navy

* * * * * * *

*"CHAPTER 68—NARCOTICS"*

"Sec.
"*1401. Definitions.*
"*1402. Heroin—penalties.*
"*1403. Sale of heroin to juveniles—penalties.*
"*1404. Smuggling of marihuana—penalties.*
"*1405. Second or subsequent offenses—procedure.*
"*1406. Surrender of heroin—procedure.*
"*1407. Telephonic interception, evidence.*
"*1408. Additional authority for the Bureau of Narcotics and Bureau of Customs.*
"*1409. Motion to suppress—appeal by the United States.*
"*1410. Issuance of search warrants—procedure.*
"*1411. Border crossings—narcotic addicts and violators.*

"*§ 1401. Definitions*

*"As used in this chapter—*

*"The term 'heroin' shall mean any substance identified chemically as diacetylmorphine or any salt thereof.*

*"The term 'marihuana' shall have the meaning given such term in section 4761 of the Internal Revenue Code of 1954.*

*"The term 'United States' shall include the District of Columbia, the Territory of Alaska, the Territory of Hawaii, the insular possessions of the United States, the Trust Territory of the Pacific, and the Canal Zone.*

*"The term 'person' shall include any partnership, association, company, corporation, or one or more individuals.*



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*"§ 1402. Heroin—penalties*

*"Notwithstanding any other provision of law, whoever knowingly imports or otherwise brings any heroin into the United States, or causes any such heroin to be imported or otherwise brought into the United States, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such heroin after being imported or brought in, knowing the same to have been imported or brought in contrary to law, or conspires to commit any such act or acts shall, except as provided in section 1403 of this chapter, be fined not more than $3,000 and imprisoned not less than five nor more than ten years. For a second offense, the offender shall be fined not more than $5,000 and imprisoned not less than ten nor more than thirty years. For a third or subsequent offense the offender shall be fined not more than $10,000 and imprisoned for life, except that the offender shall suffer death if the jury in its discretion shall so direct.*

*"Whenever on trial for a violation of this section, the defendant is shown to have or to have had the heroin in his possession, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains his possession to the satisfaction of the jury.*

*"§ 1403. Sale of heroin to juveniles—penalties*

*"Notwithstanding any other provision of law, whoever knowingly sells, gives away, furnishes, or dispenses, facilitates the sale, giving, furnishing, or dispensing, or conspires to sell, give away, furnish, or dispense any heroin unlawfully imported or otherwise brought into the United States, to any person who has not attained the age of eighteen years, shall be fined not more than $10,000 and imprisoned for life, or for not less than ten years, except that the offender shall suffer death if the jury in its discretion shall so direct.*

*"Whenever on trial for a violation of this section, the defendant is shown to have had heroin in his possession, such possession shall be sufficient proof that the heroin was unlawfully imported or otherwise brought into the United States unless the defendant explains his possession to the satisfaction of the jury.*

*"§ 1404. Smuggling of marihuana—penalties*

*"Notwithstanding any other provision of law, whoever, knowingly, with intent to defraud the United States, imports or brings into the United States any marihuana contrary to law, or smuggles or clandestinely introduces into the United States any marihuana which should have been invoiced, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such marihuana after importation, knowing the same to have been imported or brought into the United States contrary to law, or whoever conspires to do any of the foregoing acts, shall be fined not more than $3,000 and imprisoned not less than five nor more than ten years. For a second offense, the offender shall be fined not more than $5,000 and imprisoned not less than ten nor more than twenty years. For a third or subsequent offense the offender shall be fined not more than $10,000 and imprisoned for life.*

*"Whenever on trial for a violation of this section, the defendant is shown to have or to have had the marihuana in his possession, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains his possession to the satisfaction of the jury.*

*"§ 1405. Second or subsequent offenders—procedure*

*"(a) Upon conviction of any of the offenses defined in section 1402 or 1403 hereof, or upon a second or subsequent conviction of the offense defined in section 1404 hereof, execution of sentence shall not be suspended, and the provisions of section 4202 of title 18 of the United States Code shall not apply, and in the District of Columbia the provisions of the Act of July 15, 1932 (47 Stat. 697, D. C. Code 24–201 and the following), as amended, shall not apply.*

*"(b) For the purpose of this chapter, an offense shall be considered a second or subsequent offense, as the case may be, if the offender previously has been convicted of any of the offenses defined in section 1402, 1403, or 1404 hereof, or if he has been convicted of any other Federal offense involving the unlawful importation, transportation, purchase, dispensing, distributing, sale, or concealment of heroin or marihuana or of conspiracy to commit any such act or acts. After conviction, but prior to pronouncement of sentence, the court shall be advised by the United States attorney whether the offense is a first or a subsequent offense. If it is not a first offense, the United States attorney shall file an information setting forth any prior convictions. The offender shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denies such identity, sentence shall be postponed for such time as to permit a trial before a jury on the sole issue of the offender's identity with the person previously convicted. If the offender is found by the jury to be the person previously convicted, or if he acknowledges that he is such person, he shall be sentenced as prescribed in this chapter.*

*"§ 1406. Surrender of heroin—procedure*

*"(a) Any heroin lawfully possessed prior to the effective date of this Act shall be surrendered to the Secretary of the Treasury, or his designated representative, within one hundred and twenty days after the effective date of the Act, and each person making such surrender shall be fairly and justly compensated therefor. The Secretary of the Treasury, or his designated representative, shall formulate regulations for such procedure. All quantities of heroin not surrendered in accordance with this section and the regulations promulgated thereunder by the Secretary of the Treasury, or his designated representative, shall by him be declared contraband, seized, and forfeited to the United States without compensation. All quantities of heroin received pursuant to the provisions of this section, or otherwise, shall be disposed of in the manner provided in section 4733 of the Internal Revenue Code of 1954, except that no heroin shall be distributed or used for other than scientific research purposes approved by the Secretary of the Treasury, or his designated representative.*

*"(b) Any heroin or marihuana introduced into the United States in violation of sections 1402, 1403, or 1404 hereof shall be summarily forfeited to the United States without the necessity of instituting forfeiture proceedings of any character. All quantities of heroin so forfeited shall be disposed of in the same manner as provided in subsection (a) hereof, and all quantities of marihuana so forfeited shall be disposed of in accordance with the provisions of section 4745 of the Internal Revenue Code of 1954.*

*"§ 1407. Telephonic interception, evidence*

*"Notwithstanding any other provision of law, information obtained by any Federal law enforcement officer or agent, authorized individually or*

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*by regulation by the Secretary of the Treasury, as a result of the interception of any telephonic communication in the course of any investigation to detect or prevent a violation of sections 1402, 1403, or 1404 hereof, or section 2 of the Narcotic Drugs Import and Export Act, or a violation of the Internal Revenue Code of 1954 the penalty for which is provided in section 7237 (a) of such Code, as amended, shall be deemed admissible in evidence in any criminal proceedings involving any such sections: Provided, That prior to such interception (1) such officer or agent shall make application to the United States attorney or his designated assistant in the district where the contemplated interception is to be made, for approval of such interception, such application to be supported by affidavit showing sufficient facts to warrant reasonable belief that the contemplated telephonic interception is necessary to obtain evidence relating to the violation of any such sections, and (2) upon such approval, such application and affidavit accompanied by a petition alleging that there exists reasonable grounds to believe that the contemplated interception is necessary in the public interest to gather information of a violation of any such sections, shall be brought to the attention of a judge of the courts of the United States within his territorial jurisdiction by the said United States attorney or his designated assistant. Said judge shall consider such petition and issue an order authorizing such interception to be made if satisfied that reasonable grounds do exist. Said order shall specify therein the particular telephone number or numbers to be intercepted if known, the name of the subscriber or subscribers if known, and the address, or the addresses of the premises from which any telephonic communication to be intercepted shall either emanate or be received.*

*"Any order authorized pursuant to the provisions of this section shall be effective for ninety days from the date of issuance unless renewed for an additional period of ninety days, after a determination that reasonable grounds for continued interception have been shown.*

*"Within five days of the date set for the trial of a defendant charged with a violation of any of the above enumerated Acts, the Federal law enforcement officer or agent to whom an order has been granted to gather information of such violation in accordance with the provisions of this section shall file with the court a verified report listing the number of interceptions made and the dates thereof.*

*"The judge issuing an order pursuant to the provisions of this section shall direct that it, and all papers and documents pertinent thereto, be sealed and impounded by the clerk of the court in a suitable place, and its contents disclosed by no person until such time as the Federal law enforcement officer or agent shall file his report as required by this section, or unless pursuant to a direct order of the court.*

*"Any Federal law enforcement officer or agent who intercepts and divulges any telephonic communication in any manner not in accordance with the provisions of this section shall be liable under any existing Federal statute prohibiting the interception and divulging of any such communication, and nothing contained in this section shall be construed to give authorization to any person to intercept and divulge any such communication contrary to existing law for any purpose other than the purpose of detecting or preventing a violation of sections 1402, 1403, or 1404 hereof or section 2 of the Narcotic Drugs Export and Import Act or a violation of any of the provisions of the Internal Revenue Code of 1954, the penalty for which is provided in section 7237 (a) of such code, as amended.*

*"§ 1408. Additional authority for the Bureau of Narcotics and Bureau of Customs*

*"The Commissioner, Deputy Commissioner, Assistant to the Commissioner, and agents of the Bureau of Narcotics and Bureau of Customs may carry firearms, execute and serve search warrants and arrest warrants at any time of the day or night, serve subpenas and summonses issued under the authority of the United States, and make arrests without warrant for violations of any law of the United States relating to narcotic drugs (as defined in the first section of the Narcotic Drugs Import and Export Act (21 U. S. C. 171)) or marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) where the violation is committed in the presence of the person making the arrest or where such person has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.*

*"§ 1409. Motion to suppress—appeal by the United States*

*"In addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion to suppress evidence or return seized property made prior to the trial of a person charged with a violation of sections 1402, 1403, or 1404 hereof or section 2 of the Narcotic Drugs Import and Export Act, or of any of the provisions of the Internal Revenue Code of 1954, the penalty for which is provided in section 7237 (a) of such Code, as amended: Provided, That the United States attorney shall certify to the judge granting such motion, that the appeal is not taken for purposes of delay and that the prosecution is unable to go forward without the evidence suppressed. Any such appeal shall be taken within thirty days after the decision or order has been entered and shall be diligently prosecuted.*

*"§ 1410. Issuance of search warrants, procedure*

*"Notwithstanding the provisions of rule 41 (c) of the Federal Rules of Criminal Procedure, in any case involving a violation of sections 1402, 1403, or 1404 hereof, or section 2 of the Narcotic Drugs Import and Export Act, or any of the provisions of the Internal Revenue Code of 1954, the penalty for which is provided in section 7237 (a) of such code, as amended, (1) a search warrant may be served at any time of the day or night if the judge or the commissioner issuing the warrant is satisfied that there is probable cause to believe that the grounds for the application exist; and (2) a search warrant may be directed to any officer of the Metropolitan Police of the District of Columbia authorized to enforce or assist in enforcing a violation of any of such sections.*

*"§ 1411. Border crossings—narcotic addicts and violators*

*"(a) In order further to give effect to the obligations of the United States pursuant to the Hague convention of 1912, proclaimed as a treaty on March 3, 1915 (38 Stat. 1912), and the limitation convention of 1931, proclaimed as a treaty on July 10, 1933 (48 Stat. 1571), and in order to facilitate more effective control of the international traffic in narcotic drugs, and to prevent the spread of drug addiction, no citizen of the United States who is addicted to or uses narcotic drugs, as defined in section 4731 of the Internal Revenue Code of 1954, as amended (except a person using such narcotic drugs as a result of sickness or accident or injury and to whom such narcotic drug is being furnished, prescribed, or administered in good faith by a duly licensed physician in attendance upon such person, in the course of his professional practice) or who has been convicted of a*

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*violation of any of the narcotic or marihuana laws of the United States, or of any State thereof, the penalty for which is imprisonment for more than one year, shall depart from or enter into or attempt to depart from or enter into the United States, unless such person registers, under such rules and regulations as may be prescribed by the Secretary of the Treasury, with a customs official, agent, or employee at a point of entry or a border customs station. Unless otherwise prohibited by law or Federal regulation such customs official, agent, or employee shall issue a certificate to any such person departing from the United States; and such person shall, upon returning to the United States, surrender such certificate to the customs official, agent, or employee present at the port of entry or border customs station.*

*"(b) Whoever violates any of the provisions of this section shall be punished for each such violation by a fine of not more than $1,000 or imprisonment for not less than one nor more than three years, or both."*

IMMIGRATION AND NATIONALITY ACT

SEC. 212 (a) * * *

(23) Any alien who has been convicted of a violation of, *or a conspiracy to violate* any law or regulation relating to the illicit *possession of*, *or* traffic in narcotic drugs, or who has been convicted of a violation of, *or a conspiracy to violate* any law or regulation governing or controlling the taxing, manufacturing, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, or any salt derivative or preparation of opium or coca leaves, or isonipecaine or any addiction-forming or addiction-sustaining opiate; or any alien who the consular officer or immigration officers know or have reason to believe is or has been an illicit trafficker in any of the aforementioned drugs;

* * * * * * *

SEC. 241. (a) * * *

(11) is, or hereafter at any time after entry has been, a narcotic drug addict, or who at any time has been convicted of a violation of, *or a conspiracy to violate* any law or regulation relating to the illicit *possession of or* traffic in narcotic drugs, or who has been convicted of a violation of, *or a conspiracy to violate* any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate;

* * * * * * *

SEC. 241. (b) The provisions of subsection (a) (4) respecting the deportation of an alien convicted of a crime or crimes shall not apply (1) in the case of any alien who has subsequent to such conviction

been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States, or (2) if the court sentencing such alien for such crime shall make, at the time of first imposing judgment or passing sentence, or within thirty days thereafter, a recommendation to the Attorney General that such alien not be deported, due notice having been given prior to making such recommendation to representatives of the interested State, the Service, and prosecution authorities, who shall be granted an opportunity to make representations in the matter. *The provisions of this subsection shall not apply in the case of any alien who is charged with being deportable from the United States under section 241 (a) (11) of this Act.*

SECTION 8 OF THE ACT ENTITLED "AN ACT TO CREATE IN THE TREASURY DEPARTMENT, THE BUREAU OF NARCOTICS, AND FOR OTHER PURPOSES" (JUNE 14, 1930, 46 STAT. 587)

SEC. 8. (*a*) The Secretary of the Treasury shall cooperate with the several States in the suppression of the abuse of narcotic drugs in their respective jurisdictions, and to that end he is authorized (1) to cooperate in the drafting of such legislation as may be needed, if any, to effect the end named, (2) to arrange for the exchange of information concerning the use and abuse of narcotic drugs in said States and for cooperation in the institution and prosecution of cases in the courts of the United States and before the licensing boards and courts of the several States, (*3*) *to conduct narcotic training programs, as an integral part of narcotic law enforcement for the training of such local and State narcotic enforcement personnel as may be arranged with the respective local and State agencies, and* (*4*) *to maintain in the Bureau of Narcotics a Division of Statistics and Records to accept, catalog, file, and otherwise utilize narcotic information and statistics, including complete records on drug addicts and other narcotic law offenders which may be received from Federal, State, and local agencies, and make such information available for Federal, State, and local law-enforcement purposes. Any law to the contrary notwithstanding, Federal agencies of the United States shall make available to the Bureau of Narcotics the names, identification, and any other pertinent information which may be specified by the Secretary of the Treasury, or his designated representatives, of all persons who are known by them to be drug addicts or convicted violators of any of the narcotic laws of the United States, or any State thereof. The Commissioner of Narcotics shall request and encourage all heads of State and local agencies to make such information available to the Bureau of Narcotics.*

(*b*) *As used in this section, the term "Federal agencies" shall include* (*1*) *the executive departments,* (*2*) *the Departments of the Army, Navy, and the Air Force,* (*3*) *the independent establishments and agencies in the executive branch, including corporations wholly owned by the United States, and* (*4*) *the municipal government of the District of Columbia.*

The Secretary of the Treasury is hereby authorized to make such regulations as may be necessary to carry this section into effect.

SECTION 4744 (A) OF THE INTERNAL REVENUE CODE OF 1954

(a) PERSONS IN GENERAL.—It shall be unlawful for any person who is a transferee required to pay the transfer tax imposed by section

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4741 (a) to acquire or otherwise obtain any marihuana without having paid such tax, *or to receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of any such marihuana, knowing the same to have been acquired contrary to law, or to conspire to commit any of such acts in violation of the laws of the United States;* and proof that any person shall have had in his possession any marihuana and shall have failed, after reasonable notice and demand by the Secretary or his delegate, to produce the order form required by section 4742 to be retained by him shall be presumptive evidence of guilt under this section and of liability for the tax imposed by section 4741 (a).

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Calendar No. 2015

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1998

# EXTENDING THE PROVISIONS OF TITLE XIII OF THE CIVIL AERONAUTICS ACT OF 1938, AS AMENDED, RELATING TO WAR RISK INSURANCE, FOR AN ADDITIONAL 5 YEARS

MAY 14 (legislative day, MAY 7), 1956.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Interstate and Foreign Commerce, submitted the following

## REPORT

[To accompany S. 3412]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3412) to extend the provisions of title XIII of the Civil Aeronautics Act of 1938, as amended, relating to war risk insurance, for 5 years, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

### PURPOSE OF THE BILL

At the request of the Secretary of Commerce your chairman introduced S. 3412, to extend the provisions of title XIII of the Civil Aeronautics Act of 1938, as amended, relating to war risk insurance, for 5 years.

Under the provisions of existing law (sec. 1312 of the act of June 14, 1951, 65 Stat. 69, U. S. C. 722), the Secretary of Commerce is authorized to provide war-risk insurance for aircraft for a period of 5 years from June 14, 1951. This authority is due to expire on June 14, 1956. This bill would amend section 1312 by striking out the word "five" and inserting in lieu thereof the word "ten," thereby extending the period until June 14, 1961.

The usual commercial insurance policy does not insure aircraft against war risk in the event of an outbreak of hostilities. Air carriers are, therefore, reluctant to permit their aircraft to venture into potential danger areas. Without such insurance the prompt mobilization of the country's air-transport facilities also would be jeopardized. For these reasons the Congress in 1951, enacted title XIII of the Civil Aeronautics Act of 1938 which authorized the Department of Commerce to issue binders against war risk in the event of the outbreak of hostilities.



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If this legislation is approved, binder fees to be collected will more than cover expenses chargeable to the war-risk insurance fund under peacetime operations. If and when the program goes into operation in time of war, it is anticipated that premium receipts would keep the insurance fund self-sustaining.

The letter from the Secretary of Commerce requesting the proposed legislation follows.

THE SECRETARY OF COMMERCE,
*Washington, D. C., March 6, 1956.*

Hon. RICHARD M. NIXON,
*President of the Senate,*
*United States Senate, Washington, D. C.*

DEAR MR. PRESIDENT: The Department recommends to the Congress for its consideration the attached draft of a proposed bill to extend the provisions of title XIII of the Civil Aeronautics Act of 1938, as amended, relating to war-risk insurance for an additional 5 years.

There are also attached four copies of the statement of purpose and need in support thereof.

We have been advised by the Bureau of the Budget that it would interpose no objection to the submission of the draft legislation to the Congress.

Sincerely yours,

SINCLAIR WEEKS,
*Secretary of Commerce.*

A BILL To extend the provisions of Title XIII of the Civil Aeronautics Act of 1938, as amended, relating to war risk insurance for an additional five years

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That Section 1312 of Title XIII of the Civil Aeronautics Act of 1938, as amended (Act of June 23, 1938, ch. 601, 52 Stat. 977, as amended by the Act of June 14, 1951, ch. 123, 65 Stat. 69, 49 U. S. C. 722), is amended by striking out the word "five" and inserting in lieu thereof the word "ten."

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STATEMENT OF PURPOSE AND NEED IN SUPPORT OF THE PROPOSED LEGISLATION

The bill would extend for 5 years the authority of the Department of Commerce to provide war-risk insurance for aircraft.

The usual commercial insurance policy does not insure aircraft against war risk in the event of outbreak of hostilities. Air carriers are, therefore, reluctant to permit their aircraft to venture into potential danger areas. Without such insurance the prompt mobilization of the country's air-transport facilities also would be jeopardized. For these reasons the Congress enacted in 1951, title XIII of the Civil Aeronautics Act of 1938 which authorized the Department to issue binders insuring United States aircraft against war risk in the event of outbreak of hostilities.

This authority will expire on June 14, 1956. The attached proposal would extend the war-risk insurance authority for an additional 5 years. If this legislation is approved, binder fees to be collected will more than cover expenses chargeable to the war-risk insurance fund under peacetime operations. If and when the program goes into operation in time of war, it is anticipated that premium receipts would keep the insurance fund self-sustaining.

Enactment of the legislation would therefore insure our civil air fleet against loss from war risks with little likelihood of any need for significant appropriation to the war-risk insurance fund. The Department of Commerce urges early enactment of this legislation in order that the civil air fleet may continue to be covered by war-risk insurance without danger of lapse.

In reply to a letter from the chairman of your committee the Comptroller General forwarded the following letter relative to S. 3412.

COMPTROLLER GENERAL OF THE UNITED STATES,
*Washington, D. C., March 19, 1956.*

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Interstate and Foreign Commerce,*
*United States Senate.*

DEAR MR. CHAIRMAN: Reference is made to your letter of March 10, 1956, and enclosure, acknowledged March 13, requesting our comments on S. 3412, 84th Congress.

Under the provisions of existing law (sec. 1312 of the act of June 14, 1951, 65 Stat. 69, 49 U. S. C. 722), the Secretary of Commerce is authorized to provide war-risk insurance for aircraft for a period of 5 years from that date. The subject bill, if enacted into law, would extend such authority of the Secretary of Commerce for an additional period of 5 years from June 14, 1956.

We perceive no objection to favorable consideration being given the proposed further amendment of the act. As requested, this report is submitted in triplicate.

Sincerely yours,

JOSEPH CAMPBELL,
*Comptroller General of the United States.*

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

ACT OF JUNE 14, 1951, (65 STAT. 69, 49 U. S. C. 722)

"TITLE XIII—WAR RISK INSURANCE

* * * * * * *

"SEC. 1302. (a) The Secretary, with the approval of the President, and after such consultation with interested agencies of the Government as the President may require, may provide insurance and reinsurance against loss or damage arising out of war risks in the manner and to the

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extent provided in this title, whenever it is determined by the Secretary that such insurance adequate for the needs of the air commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States: *Provided*, That no insurance shall be issued under this title to cover war risks on persons or property engaged or transported exclusively in air commerce within the several States of the United States and the District of Columbia.

"(b) Any insurance or reinsurance issued under any of the provisions of this title shall be based, insofar as practicable, upon consideration of the risk involved.

"SEC. 1303. The Secretary may provide the insurance and reinsurance, authorized by section 1302 with respect to the following persons, property, or interest:

"(a) American aircraft, and those foreign-flag aircraft engaged in aircraft operations deemed by the Secretary to be in the interest of the national defense or the national economy of the United States, when so engaged.

"(b) Cargoes transported or to be transported on any such aircraft, including shipments by express or registered mail; air cargoes owned by citizens or residents of the United States, its Territories, or possessions; air cargoes imported to, or exported from, the United States, its Territories, or possessions and air cargoes sold or purchased by citizens or residents of the United States, its Territories, or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories, or possessions; air cargoes transported between any point in the United States and any point in a Territory or possession of the United States, between any point in any such Territory or possession and any point in any other such Territory or possession or between any point in any such Territory or possession and any other point in the same Territory or possession.

"(c) The personal effects and baggage of the captains, pilots, officers, members of the crews of such aircraft, and of other persons employed or transported on such aircraft.

"(d) Captains, pilots, officers, members of the crews of such aircraft, and other persons employed or transported thereon against loss of life, injury, or detention.

"(e) Statutory or contractual obligations or other liabilities of such aircraft or of the owner or operator of such aircraft of the nature customarily covered by insurance.

* * * * * * *

"SEC. 1311. A person having an insurable interest in an aircraft may, with the approval of the Secretary, insure with other underwriters in an amount in excess of the amount insured with the Secretary, and, in that event, the Secretary shall not be entitled to the benefit of such insurance, but nothing in this section shall prevent the Secretary from entering into contracts of coinsurance.

"SEC. 1312. The authority of the Secretary to provide insurance and reinsurance under this title shall expire [five] *ten* years from the date of enactment of this title."

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